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SPECIFIC GROUPS AND INDIVIDUALS

MIGRANT WORKERS

Report of the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, submitted pursuant to Commission on Human Rights resolution 2001/52

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Executive summary

Pursuant to Commission on Human Rights resolution 2001/52, the Special Rapporteur on the human rights of migrants, Ms. Gabriela Rodriguez Pizarro, hereby submits her third report to the Commission at its fifty-eighth session. The report documents her activities and the communications she sent and received, during 2001. It also contains a discussion of the main trends in the protection of migrants' rights during 2001, including positive developments and situations of concern to the Special Rapporteur.

In its mandate to her, the Commission on Human Rights requested the Special Rapporteur to examine ways to overcome the obstacles existing to the full and effective protection of the human rights of this vulnerable group, including obstacles and difficulties for the return of migrants who are non-documented or in an irregular situation.

In this report, the Special Rapporteur emphasizes the important developments that have taken place in the formulation of strategies to protect the rights of migrants, and in particular the achievements of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance as regards migration and human rights.

In the course of 2001, the Special Rapporteur was able to observe the extreme forms of abuse to which migrants are subjected by trafficking in human beings. In this report, she considers the consequences of trafficking for its victims and emphasizes her concern at the way the trafficking networks operate with impunity while, paradoxically, many States penalize their victims. She considers the challenge of managing migratory flows in an orderly manner, highlighting the need to combat the corruption that goes hand-in-hand with the trafficking, and to draft national legislation that truly does penalize illegal activity of this sort which exposes migrants to the worst forms of abuse. She recommends States to ratify the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Air and Sea.

The report emphasizes the situation of migrant women and unaccompanied minors in the trafficking and smuggling of human beings, and the experience of many young women who emigrate to more developed societies and settle down in the receiving countries because they do not encounter there the patterns of discrimination and repression by other members of their families that they suffered at home.

The Special Rapporteur also addresses the connection between asylum and migration, pointing out that the 1951 Convention relating to the Status of Refugees needs to be applied more effectively and that human rights must be properly protected as migration is controlled. She observes, furthermore, that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is about to enter into force, needing only three more ratifications to do so.

The report emphasizes the need to incorporate the protection of human rights fully into migration control policies. It is also necessary for States to honour their international commitments on human rights in a non-discriminatory manner, even during periods of emergency.

In chapter V, the Special Rapporteur gives details of the urgent appeals she sent to Bahrain, Indonesia, the Islamic Republic of Iran, Lebanon, Saudi Arabia, Spain, Tonga, Turkey and the United States of America, and her communications through the normal channels with Indonesia, Morocco and Spain.

Among the points covered in the Special Rapporteur's recommendations are that States should draw up national programmes of action pursuant to the agreements reached at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and that civil society should play an active role in the execution of those programmes.

The Special Rapporteur also recommends States to give priority to the orderly management of migratory flows where there is a real demand for immigration, while at the same time devising strategies to combat illegal migration and trafficking.

The Special Rapporteur urges States to incorporate the protection of migrants' rights into all their migration control policies, paying particular attention to the situation of illegal migrants in transit countries. Countries of origin should offer proper consular protection when their nationals are detained or their rights are infringed. All States should also remedy situations in which migrants are held in indefinite detention.

The Special Rapporteur warmly recommends States and organizations to give priority to the situation of migrant domestic workers, encouraging forums, meetings and gatherings where strategies to protect this particularly vulnerable group can be formulated.

The Special Rapporteur also recommends States to work together with civil society and migrant organizations, nationally, regionally and internationally, to coordinate their protection efforts.

Introduction

1. This report is submitted pursuant to Commission on Human Rights resolution 2001/52 of 24 April 2001. It is the third annual report that the Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, has submitted to the Commission, and also the third such report to the Commission since the Economic and Social Council established the mandate on the human rights of migrants by decision 1999/239, in which it took note of Commission resolution 1999/44.

2. Chapter I is a general description of the new elements in the resolution on which the Special Rapporteur's mandate is based. Chapter II discusses the changes that have occurred in 2001 in the legal framework for that mandate. Chapter III offers a general survey of the migration situation as observed by the Special Rapporteur in 2001, and the situations which required her closer attention. Chapter IV provides detailed information on the main activities carried out by the Special Rapporteur pursuant to her mandate during the period under consideration, including emergencies in which she was required to take action. Chapter V summarizes her concluding observations and recommendations to Governments, civil society and migrants themselves. The report continues the discussion of topics taken up in the Special Rapporteur's previous report to the Commission, emphasizing the serious problem of smuggling of migrants and the attendant human rights violations, the situations faced by migrant women, and what the Special Rapporteur has learned about the conditions facing unaccompanied children. The Special Rapporteur is grateful for the comments and information she received in response to her second report to the Commission, and has sought to incorporate them or pass them on in this report.

3. Annexed to this report is an account of the Special Rapporteur's visit to Ecuador from 5 to 16 November 2001.

I. MANDATE

4. In its resolution 2001/52, the Commission on Human Rights encouraged the Special Rapporteur to continue to examine ways and means of overcoming existing obstacles to the full and effective protection of the human rights of persons belonging to this large vulnerable group, including obstacles and difficulties for the return of migrants who are undocumented or in an irregular situation, in conformity with her mandate as contained in Commission resolution 1999/44.

5. During the period covered by this report, the Special Rapporteur has continued to develop her contacts with a variety of sources, including Governments, organizations and migrants, paying special attention to the gender perspective when seeking and analysing information as recommended by the Commission on Human Rights in its resolutions concerning the mandate. In fulfilment of her mandate, she has monitored national and regional negotiations concerned, in particular, with the return and reabsorption of migrants who are undocumented or in an irregular situation, as the Commission requested when her mandate was established.

6. Throughout 2001, the Special Rapporteur gave priority to the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Conference itself, as requested by the Commission in its resolutions concerning her mandate. Resolution 2001/52 reaffirmed the responsibility of Governments to safeguard and protect migrants against illegal or violent acts, in particular acts of racial discrimination and crimes perpetrated with racist or xenophobic motivation by individuals or groups, and urged them to take firmer action in that regard.

7. Lastly, in response to the Commission on Human Rights' request to her, the Special Rapporteur has continued to study the situation of migrants' rights so as to formulate appropriate recommendations to prevent and remedy violations of those rights wherever they may occur. To that end, the present report also advocates the effective application of the relevant international standards on the subject.

II. LEGAL FRAMEWORK

8. In this report, the Special Rapporteur, encouraged by the Commission on Human Rights in its resolution 2001/52 to continue to examine ways and means of overcoming existing obstacles to the full and effective protection of the human rights of migrants, discusses the changes to the legal framework for her mandate that have occurred during 2001. The Special Rapporteur refers to her previous report to the Commission, at its fifty-seventh session (E/CN.4/2001/83), which contains an extensive discussion of the reference legal framework for her mandate.

9. First, the Special Rapporteur must single out the great contribution made by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to the protection of migrants' rights. The agreements reached during that Conference, published on 2 January 2002 (A/CONF.189/12) and due to be considered by the General Assembly, are important indicators of States' willingness to see to the full and effective protection of those rights as an addition to their existing international obligations. The Conference engendered numerous recommendations on steps to be taken by all States to ensure that migrants could live free of racial violence, discrimination and xenophobia.[1] The World Conference also recognized the important link between migration control and the need to protect the human rights of all migrants.[2]

10. Within the legal framework mapped out for her report to the Commission at its fifty-seventh session, the Special Rapporteur emphasized the importance of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990. She commented in the report that the Convention was due to enter into force imminently, since the ratifications of Uruguay (15 February) and Belize (14 November) had been received in 2001 and only three more ratifications were needed for entry into force.

11. During her official visit to Ecuador, the Special Rapporteur was also informed that Ecuador's Congressional Committee on International Affairs and National Defence had endorsed the text of the Convention and ratification was imminent. That would make the 18th

of the 20 ratifications necessary for the Convention to enter into force. The Special Rapporteur takes this opportunity to recommend all States that have not yet done so to consider ratifying this important instrument.

12. The Special Rapporteur emphasizes the importance of the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Air and Sea. These three agreements are important references for the protection of migrants' rights, because they govern protection in the situations where the most extreme violations of migrants' rights occur. Their ratification would be an important step towards effectively preventing the traffic in and smuggling of human beings and avoiding penalizing the victims.

13. The Special Rapporteur regards as particularly important the clauses in those instruments calling on States to classify the trafficking in and smuggling of human beings as criminal offences, and to establish as aggravating circumstances any that, for example, endanger the lives or safety of migrants. She emphasizes the wording in the Protocol against the smuggling of migrants which states explicitly that "migrants shall not become liable to criminal prosecution" for having been the object of the offences covered by the Protocol, which is contrary to what she has come across in a variety of accounts since she took up her mandate.

14. The Protocols are international legal frameworks for efforts to combat and prevent trafficking and smuggling through international cooperation, and set out specific guidelines on the appropriate strategies and methods to follow. They also state the principles that must be respected when the victims of smuggling and trafficking are repatriated or returned, laying emphasis on the victims' dignity and safety. As this report was being completed, 140 States had signed the United Nations Convention against Transnational Organized Crime and 6 had become parties, 101 States had signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children but only 4 had ratified it, while 97 States had signed the Protocol against the Smuggling of Migrants by Land, Air and Sea, and 4 had ratified that.

15. The Special Rapporteur was extremely interested to receive, during 2001, the report of the Special Rapporteur on the rights of non-citizens, Mr David Weissbrodt, submitted to the Sub-Commission on the Promotion and Protection of Human Rights at its fifty-third session pursuant to Sub-Commission decision 2000/103 on the rights of non-citizens (E/CN.4/Sub.2/2001/20 and Add.1).

16. The Special Rapporteur on the rights of non-citizens examines, instrument by instrument, the rights that non-citizens have, international and regional case law, and the comments and recommendations made by the bodies established under the treaties concerned. The Special Rapporteur on the human rights of migrants regards this report as a worthy contribution to the systematizing of the protective legal framework for non-citizens in the international sphere. She considers it a successful compilation of the challenges involved in providing a clear definition of those rights in international law. The report mentions, for instance, the important work that the Committee on the Elimination of Racial Discrimination could continue to carry out, the better to articulate the rights of non-citizens in matters of non-discrimination.

17. A close reading of the report also reveals, in the Special Rapporteur's opinion, that the international system of protection is less robust where non-citizens in irregular situations are concerned. It is crucial to remember the general principles governing States' obligations towards migrants, which must be upheld irrespective of any classification of rights by individuals' migrant status. In particular, the Special Rapporteur would remind all concerned of the general principle of non-discrimination set forth in the Charter of the United Nations, the Universal Declaration of Human Rights and the main international human rights instruments to which the Special Rapporteur on the rights of non-citizens refers in his report. She draws attention to the agreement reached at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to request States to "promote and protect fully and effectively the human rights and fundamental freedoms of all migrants, in conformity with the Universal Declaration of Human Rights and their obligations under international human rights instruments, regardless of the migrants' immigration status.[3]

18. In keeping with the mandate given to her by the Commission on Human Rights, and in connection with the steps now being taken to confront terrorism on global scale, the Special Rapporteur emphasizes how important it is for States to honour the international commitments on human rights that they have made, especially as regards the non-derogable rights of every human being. In particular, it bears repeating that States parties to the International Covenant on Civil and Political Rights can, to the extent strictly required by the prevailing situation, suspend obligations they have assumed under the Covenant provided that such action is not incompatible with their other obligations under international law and does not result in any kind of discrimination on grounds of race, colour, sex, language, religion or social origins. The Special Rapporteur also emphasizes the significance of article 13 of the Covenant, which states that "an alien lawfully in the territory of a State party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority".

19. The Special Rapporteur echoes the call made by the Commission on Human Rights in resolution 2001/52, adopted at its fifty-seventh session on 24 April 2001, emphatically reaffirming the duty of States to ensure full respect and observance of the Vienna Convention on Consular Relations. In particular, she reaffirms the right of foreign nationals, regardless of their immigration status, to communicate with a consular official of their own State in the case of detention, and the obligation of the State in whose territory the detention occurs to inform the foreign national of that right.

20. Lastly, resolution 2001/52 urges all States to adopt effective measures to put an end to the arbitrary arrest and detention of migrants, including by individuals and groups, welcomes immigration programmes adopted by some countries that allow migrants to integrate fully into the host countries, facilitate family reunification and promote a harmonious and tolerant environment, and encourages States to consider the possibility of adopting such programmes.

21. In connection with the concern which she has felt throughout her mandate about the status of migrants' family members and the psychosocial effects of migration, the Special Rapporteur attaches importance to Commission resolution 2001/56 of 24 April 2001, "Protection of migrants and their families". She particularly values paragraph 2, which "encourages States of origin to promote and protect the human rights of those families of migrant workers which remain in the countries of origin, paying particular attention to children and adolescents whose parents have migrated, and encourages international and non-governmental organizations to consider supporting States in this regard". The Special Rapporteur feels that resolution 2001/56 captures the entire problem of how migration affects human rights, ranging from the situations of migrants in transit countries and of the children remaining in the country of origin to the conditions under which earnings are remitted.

22. Lastly, on the connection between asylum and migration addressed in chapter IV of this report, the Special Rapporteur draws attention to the need to apply the 1951 Convention on the Status of Refugees and the 1967 Protocol thereto more effectively, and ensure that human rights really are protected during efforts to control migration.

III. METHODS OF WORK

23. For a general description of the working methods associated with her mandate, the Special Rapporteur refers to the report she submitted to the Commission on Human Rights at its fifty-seventh session (E/CN.4/2001/83), which covers them in detail on the basis of the resolutions which created the mandate.

IV. GENERAL CONTEXT AND SITUATIONS REQUIRING THE SPECIAL RAPPORTEUR'S ATTENTION

A. Status of the question

24. In her report to the Commission on Human Rights at its fifty-seventh session, the Special Rapporteur identified five key groups of causes of the migratory flows currently observed around the world. She emphasized social and economic exclusion, the effects of widespread warfare, the demand for migrants in the receiving countries, the attraction that those countries exert, and natural disasters as the main factors leading people to emigrate. During the period covered by this report, the Special Rapporteur has observed how people emigrate and the circumstances in which the largest and most serious violations of human rights occur. Specifically, she has observed many cases of death, cruel, inhuman and degrading treatment and abuse, of men, women and children of both sexes from Asia, Africa, Latin America and eastern Europe, associated with the smuggling of migrants.

25. The Special Rapporteur repeats that States bear a shared responsibility for regulating migration and combating abuses and violations of migrants' rights. She has pointed out that such violations begin in the countries of origin, where future migrants cannot establish themselves, often face discrimination and are denied their basic rights. Parallel to this, in the receiving countries there is a demand for immigrant labour in a variety of productive sectors and

both commercial and private services to offset the effects of an aging population. But the flows of migrants are still poorly managed and regulated, and there has been an alarming increase in international networks smuggling migrants, exposing them to grave modern forms of human rights violation.

26. The Special Rapporteur also observes that victims of trafficking continue to be penalized despite the ordeals they undergo, while in the great majority of countries the criminal trafficking networks still operate with impunity. She also remarks that migrants are in a precarious situation in transit countries, where they face capture, detention and expulsion. She is concerned at the lack of protective mechanisms in those countries: countries of origin must negotiate with transit and receiving countries to guarantee respect for their citizens' rights.

27. At the eighty-second session of the Council of the International Organization for Migration (IOM), the Special Rapporteur identified the regulation of migratory flows and action to combat smuggling in migrants from the countries of origin as the main challenge for the coming century. She also remarked that it was increasingly incumbent on States to protect migrants' rights and tackle the question of protection as an integral part of migration control. She emphasized that the protection of migrants' rights cannot be viewed out of context, but should rather be regarded as an issue that cuts across and relates to all aspects of migration management and control over which States have sovereign authority. The focus on human rights should be an integral part of any migration-related procedure, including the deportation and return of undocumented individuals.

28. The Special Rapporteur is concerned at the situation of migrants in detention, waiting endlessly to be deported even after completing a penal sentence. Such cases occur in many countries when neither the migrant nor the State has the resources to finance the journey home, when the migrants lack travel documents and/or there is no consular office to send such documents to the countries where they are, and in particular when there is no bilateral arrangement governing deportation.

29. At the same time, the Special Rapporteur's attention has been captured by reports from Ecuadorian migrants' families claiming that their relatives have been put on trial and sentenced in transit countries under identities (names and nationalities) other than their own.

30. It is, the Special Rapporteur points out, especially important to encourage dialogue between countries of origin, transit countries and receiving countries so as to coordinate efforts to combat the smuggling of migrants and bring some order to the situation. Unilateral action to deal with migration is ineffectual: migration is a dynamic phenomenon involving many different parties and, in particular, civil society. Inviting civil society organizations to join in the dialogue now beginning regionally, bilaterally and nationally among States is sound practice, in the Special Rapporteur's view, given those organizations' knowledge of how migrants live and the assistance they provide daily to thousands of migrants around the world. She takes a positive view of regional processes in which civil society is treated as a partner and important matters such as protecting migrants' rights, preventing trafficking and gender and migration are discussed.

B. Matters requiring the Special Rapporteur's attention

Trafficking in migrants

31. In her report on her official visit to Ecuador (E/CN.4/2002/94/Add.1), the Special Rapporteur details how trafficking in persons comes about in Ecuador and its effects on its victims and migrants' families. Generally speaking, besides what she witnessed in Ecuador, the reports the Special Rapporteur received in 2001 reveal the extreme forms of abuse perpetrated by those engaged in the transnational organized crime of smuggling migrants all over the world. She is concerned about the situation of women caught up in trafficking, who are subjected to sexual abuse by members of the criminal gangs but also report instances of abuse by State employees when they are intercepted in transit countries. She is also alarmed at the use of illegal immigration channels by unaccompanied minors who purchase false identities or whose exit permits are handled by the trafficking networks, who also face abuse at the networks' hands.

32. The Special Rapporteur has received reports of offences associated with the smuggling of migrants, in particular accounts of the deaths of hundreds of migrants being smuggled by sea. In 2001, to mention just two cases, she was informed of the deaths of over 80 people in the Gulf of Aden and 356 people on an overcrowded boat that sank off the coast of Indonesia. She has also received reports of large numbers of migrants dying of suffocation while being smuggled by land or sea.

33. Migrants' families in various countries have also informed the Special Rapporteur that migrants appear to have vanished in transit countries. It is extremely difficult to ascertain the whereabouts of migrants using illegal migration channels, since they travel under assumed identities of which their families are unaware. According to reports received by the Special Rapporteur, migrants are often detained, tried and sentenced under names and nationalities other than their own, and this makes it difficult for their families to trace them. Other migrants are reported to have disappeared and died under similar circumstances as they tried to cross dangerous borders or were caught up in traffic accidents while being transported by the smugglers.

34. The Special Rapporteur is also concerned at the undue advantage taken of the families of migrants using the smuggling networks, especially the debt bondage to which they are subject in the country of origin. A lack of official means of obtaining loans in many countries where migration begins encourages the development of informal lending networks charging interest at usurious rates. Informal lending networks grow up alongside the smuggling networks, supplying the money that the migrants pay the smugglers. They create a vicious circle of debt, leaving houses, land and goods mortgaged, and the only hope of paying off what is owed is with the earnings remitted, for the most part, by migrants working illegally abroad.

35. The Special Rapporteur notes that a good many countries have not come up with an effective strategy to combat the spread of illegal migrant smuggling networks or made trafficking a punishable offence under their law. National legislation on the subject is still embryonic, and most States are not parties to the United Nations Convention against

Transnational Organized Crime and the two supplementary protocols on trafficking and smuggling. The Special Rapporteur is also concerned at reports that State employees are suspected of being in league with the smuggling networks, and reports of the prevailing corruption in this area.

36. The Special Rapporteur considers it highly important to make an effort to block illegal migration, which not only exposes migrants to abuse during their voyage but also, because of their illegal status, affects their rights in the country of destination. Illegal migrants are more likely to face unfair exploitation, slave labour, working conditions that endanger their health, safety and mental well-being, and other violations of their rights; they find it hard to report such abuses for fear of being deported. The debt bondage of their families at home forces many migrants in the receiving countries to accept any kind of work so that they can pay off the debts. Women trapped into employment as domestic servants or forced into degrading sex work are especially vulnerable.

37. On the subject of preventing smuggling, the Special Rapporteur does not think it is possible to evade a thoroughgoing debate on how to regulate migratory flows where there is a real demand for immigrants. Effective policies are needed to prevent illegal migration, starting in the countries of origin, by providing nationals with proper documents, mounting information campaigns and enabling people to put down roots in their home countries. The Special Rapporteur does not believe that economic aid for development can by itself solve the problem of rootlessness: the countries of origin must also undertake to promote the political, social and cultural establishment and integration of their nationals. She also considers that fighting corruption is another important dimension of efforts to combat the smuggling of migrants in all countries.

Trafficking in persons, especially women and children

38. The Special Rapporteur observes that few countries have managed to combat trafficking in persons successfully. She is concerned at countless reports on the traffic in female domestic servants who are treated as slaves by their employers and left without protection against sexual, physical and psychological abuse within the home. She is alarmed at the situation of the many women enslaved in the sex industry in many developed countries, who are also penalized if they are found to be there illegally despite their subjugation by international mafias. She is particularly worried to note that a large number of these women are under age.

39. Women and young people, and children in largely undeveloped countries, are particularly likely to be preyed upon by the trafficking networks. In Ecuador the Special Rapporteur was told of the existence of a network trafficking in under-age Ecuadorian girls, indigenous girls in particular, supposedly for the sex industry in Japan. She also notes with concern the alleged existence of networks trafficking eastern European women into western countries.

40. The Special Rapporteur is perturbed at the high degree of impunity associated with this phenomenon of extreme abuse on a global scale.

The connection between asylum and migration

41. The Special Rapporteur takes a positive view of the debate between the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) on the connection between asylum and migration that began during the Global Consultations staged in 2001 by UNHCR. She points out that respect for the institution of asylum must be ensured, together with respect for the human rights of migrants, asylum-seekers and refugees, during efforts to control migration.

42. The Special Rapporteur sees two key topics emerging from this debate. One is the need to ensure that migration management and control policies protect human rights, to avoid the various kinds of abuse to which migrants, asylum-seekers and refugees are subjected. The other is the ambiguity inherent in deciding who is a migrant and who a refugee. The Special Rapporteur finds it increasingly difficult to distinguish between the two.

43. Many migrants resort to the asylum system for want of regular channels for migration; facing a hardening of policy on the granting of asylum, paradoxically, increasing numbers of migrants are resorting to illegal migration to escape violence and persecution. Fear of being denied refugee status, of being put in a refugee camp, of the unsafe conditions in those camps and of being seen and identified as refugees are all factors which the Special Rapporteur sees as pushing refugees to go underground.

44. As a member of the expert panel on refugees and migrants set up by the Office of the United Nations High Commissioner for Human Rights and UNHCR for Human Rights Day, the Special Rapporteur emphasized that migrants and refugees should not have to compete for protection. The debate over asylum and migration should encourage stricter regard for the 1951 Convention and for States' commitments on human rights in all matters relating to migration control and the protection of migrants' rights. The Special Rapporteur is uneasy about linking protection to asylum and refugee status exclusively. She considers it important to recall the resolutions constituting her mandate in which States indicate that they are encouraged by the increasing interest among the international community in the full and effective protection of the human rights of all migrants.

The situation since 11 September

45. In a statement issued on 25 September 2001, the Special Rapporteur forcefully condemned the attacks mounted against the United States of America on 11 September. She appealed for people not to associate terrorism with migration, saying that Governments had a responsibility to combat terrorism in all its forms, while it was important not to damage the system of rights characteristic of democratic societies which terrorism sought to destroy. She appealed for migrants not to be viewed as a category whose rights could be violated simply because they were not nationals. In her public statements since 11 September the Special Rapporteur has reminded States of their duty to improve their security and intelligence systems so as to protect all those living within their territory, migrants included. At the eighty-second session of the IOM Council, she told member States that "the alternative to unregulated migration which can damage a State's security and does in fact harm migrants' rights is to control migratory flows, especially when there is a real demand for migration".

46. The Special Rapporteur considers that policies discriminating against migrants because of their national origin cannot be allowed to take root, and States must honour their international undertakings on human rights, particularly as regards the non-derogable rights of every individual.

47. The Special Rapporteur added her name to those of 16 other independent United Nations experts beneath a statement released on Human Rights Day voicing deep concern over the adoption or contemplation of anti-terrorist and national security legislation and other measures that might infringe upon the enjoyment of human rights. The statement also deplored human rights violations and measures particularly targeting groups such as migrants whose effect was to limit the protection of their rights.

48. In her statement of 25 September, the Special Rapporteur welcomed efforts by Governments to combat racist and xenophobic acts perpetrated against migrants in different parts of the world in reaction to the attacks of 11 September.

The situation of migrant women

49. Accounts she has received during the period covered by this report suggest to the Special Rapporteur that many of the young women emigrating to more developed countries settle there whether they arrived legally or not, because they do not face the same patterns of discrimination and oppression by family members as at home. The women report that they can decide things for themselves and are free to do what they want with their lives, despite the hardships they encounter as migrants.

50. Many women also report, however, that despite their greater personal freedom they still face some discriminatory practices, such as being paid lower wages because they are migrants and women, or not having access to basic health services for women because of their illegal status. This is a matter of particular concern for migrant women who are pregnant and cannot always obtain appropriate antenatal care.

51. During the period covered by this report the Special Rapporteur has continued to pay close attention to the kinds of abuse to which migrant women in domestic service are subject. She notes that the protection afforded to domestic workers' rights is extremely flimsy, and that many instances of exploitation at work, physical, mental and sexual abuse are reported, in particular by women emigrating from Asia, a large proportion of whom migrate to countries in the Persian Gulf region.

52. In May 2001 the Special Rapporteur attended an Asian regional forum on female migrant domestic workers organized by a coalition of Asian non-governmental organizations. There she heard accounts reflecting the lack of access to protective mechanisms in the face of extreme abuse, including cases of slavery. Victims told her that their consulates had done too little to protect them and that, besides having suffered violations of their human and labour rights, they had been penalized and deported for trying to report their employers. The Special Rapporteur considers it very important to institute a detailed discussion between countries of origin and receiving countries, including migrants' and civil society organizations, on the subject of protection for female migrant domestic workers.

Unaccompanied children

53. The Special Rapporteur has received reports of various cases in which the victims were unaccompanied minors. She is concerned at the growing numbers of minors reported to be using the international migrant smuggling networks and going underground in their countries of destination. She is particularly uneasy over reported cases of minors being expelled between Spain and Morocco without any legal representation. She has also received reports of children dying on the high seas, in particular one incident in which 356 people, many children among them, were reported to have perished off the Indonesian coast. Lastly, she sent an urgent appeal in connection with the alleged detention in the United States of America of an unaccompanied Nigerian girl. The cases referred to above, and the replies the Special Rapporteur received from the Governments concerned, are described in detail in the separate section on communications sent.

V. ACTIVITIES PURSUED AND COMMUNICATIONS SENT BY THE SPECIAL RAPPORTEUR

A. Urgent appeals

54. During the period under review, the Special Rapporteur sent the following urgent appeals to the Governments of the countries referred to below. The cases in which the Governments responded to the urgent appeals are also discussed.

Saudi Arabia

55. On 27 February 2001, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, concerning the case of Siti Zaenab binti Duhri Rupa, an Indonesian migrant, who had reportedly been sentenced to death for the murder of her employer. It was reported that Siti Zaenab binti Duhri Rupa had been tried without any legal assistance and that neither her embassy nor the family's lawyer had been able to visit her at the detention centre.

56. By a letter dated 20 November 2001 the Government of Saudi Arabia informed the Special Rapporteur that, on 11 September 2000, Siti Zaenab binti Duhri Rupa had been sentenced to death, after confessing during the trial to having committed the offence of which she was accused. The Government explained that the sentence had not yet been carried out pending attainment of the age of majority by the child of the murdered woman, in case he decided to opt to receive financial compensation, to pardon the offender or to demand enforcement of the sentence, in accordance with Saudi law.

Bahrain

57. On 21 December 2000, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in connection with the case of Ms. Yeshiworq Desta Zewdie,

an Ethiopian migrant who was reported to have a legal residence in Bahrain. Ms. Yeshiworq Desta Zewdie was said to have been sentenced to death for the murder of her employer. According to information received, she had been enslaved by her employer, had been subjected to physical and psychological abuse and had received no wages for a period of two years. It was held that the alleged abuse suffered by the migrant had not been taken into account during the trial which concluded with her being sentenced to death.

58. By a letter dated 22 January 2001, the Government of Bahrain informed the Special Rapporteur that Yeshiworq Desta Zewdie had been convicted of intentional and premeditated murder in a trial at which a variety of evidence was produced against her, including a letter in which she was said to have set out her intention of murdering her employer. The Government of Bahrain also informed the Special Rapporteur that Yeshiworq Desta Zewdie's lawyer had lodged an appeal against the court's decision on 25 December 2000. It enumerated the remedies still available to her lawyer and noted that all executions must ultimately be approved by the Amir of Bahrain.

Spain

59. On 1 November 2001, the Special Rapporteur sent an urgent appeal to the Government of Spain concerning information received on two infants, aged 13 and 18 months, whose presumed mothers, two Nigerian women, had allegedly been detained and deported because of their illegal status, while the infants were reported to have remained in Spain. It was said that the lawyers for the two women had informed the examining magistrate of the existence of their alleged children and that they had been unable to appeal against the final expulsion order because it had been served on them on the very day of the expulsion. It was also reported that the infants had been kept by persons known to the presumed mothers.

United States of America

60. On 6 June 2001, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the case of Gerardo Valdez Maltos, a Mexican national who had been sentenced to death and whose execution was scheduled for 19 June 2001. It was reported that Gerardo Valdez was suffering from severe mental problems and had not been informed of his right to communicate with his consulate.

61. On 20 September 2001 the Government of the United States of America stated that the Oklahoma Court of Appeals had granted an indefinite stay of execution.

62. On 4 July 2001, the Special Rapporteur sent a joint urgent appeal together with the Working Group on Arbitrary Detention concerning the reported detention of an eight-year-old minor of Nigerian origin, who had arrived unaccompanied at John F. Kennedy international airport and presented false documents. She was said to have been held in the custody of the Immigration and Naturalization Service (INS) for over a year.

63. By a letter dated 23 August 2001, the Government of the United States of America provided the Special Rapporteur with information relating to this case. According to information received, the minor had remained in the custody of the INS until the United States Government was able to make the necessary inquiries to determine her identity and immigration status and the whereabouts of her relatives. While the INS was investigating the whereabouts of her relatives, the minor was said to have been housed in the Boystown shelter facility. The INS was reported to have made repeated efforts to discern the wishes of her parents as to her case, but had received conflicting signals as to whether she should return to Nigeria or seek asylum in the United States. Finally, the United States Government stated that on 8 August 2001, the INS had decided that the minor should be delivered into the custody and care of a cousin. Her release was reported to have been approved after the minor's father had presented information in the United States Consulate General in Lagos confirming his status.

Indonesia

64. On 27 February 2001, the Special Rapporteur sent a joint urgent appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning reports received on the situation in the province of Central Kalimantan, and in particular alleged incidents of violence committed by members of the Dayak indigenous group against migrants from the islands of Java and Madura. It had been alleged in the reports received that over 270 migrants had been killed, including women and children, and that many houses had been destroyed. It had also been reported that soldiers of the Indonesian army had been present during the events, but had not intervened or halted the violence.

65. By a letter dated 12 March 2001, the Government of Indonesia informed the Special Rapporteur that in the course of the incidents, 365 persons were reported to have lost their lives and thousands were said to have been forced to flee the province in question. The Government said it had done its utmost to stem the violence, and, in particular, had deployed six battalions of soldiers to back up the police, arrested three local officials suspected of masterminding the attacks, confiscated weapons and detained over 80 persons on charges of vandalism and another 38 on suspicion of murder. The Government of Indonesia also reported that the security apparatus had provided protection to persons fleeing the violence. The Government also informed the Special Rapporteur that on 1 March 2001 Vice-President Megawati Sukarnoputri had visited the province to secure an end to the violence and that on 8 March President Abdurrahman Wahid had visited the town of Sampit, where he was said to have negotiated a solution with Dayak leaders. The Government reports that on 9 March President Wahid had flown to Madura to meet the victims who had fled the province, and assured them that he would do his utmost to guarantee their safe return, as well as the return of their property. The Indonesian Government assured the Special Rapporteur that the situation in Sampit had returned to normal.

Lebanon

66. In her report to the Commission at its fifty-seventh session, the Special Rapporteur reported the alleged detention incommunicado of Trabun Ibrahim Laku, Gilbert Kwagy, Adam Abu Bakr Adam and Saah Muhammad Abdallah, Sudanese citizens seeking asylum in

Lebanon, on charges of illegal entry. In reply to the joint urgent appeal sent together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir, and the Special Rapporteur on torture, Sir Nigel S. Rodley, the Government of Lebanon, in a letter dated 7 May 2001, set out the details of the situation of the Sudanese asylum-seekers who had allegedly entered the country illegally and who were said to have been returned to their countries of origin, including Trapol Ibraham Lako. In a letter dated 26 November 2001, it also reported that there is no law in Lebanon relating to guarantees applicable to illegal migrants. The Government stated that, under the Law of 10 July 1963 concerning the entry, residence and exit of aliens, all aliens must enter the country through a public security checkpoint, bearing proper documents, or face a fine and deportation. The Government of Lebanon reiterated that the allegations of ill-treatment and torture of Sudanese nationals referred to in the urgent appeal were groundless.

Islamic Republic of Iran

67. On 27 June 2001, the Special Rapporteur sent a joint appeal together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, and the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran, Mr. Maurice Copithorne. The rapporteurs had received information indicating that a 14-year-old minor of Pakistani nationality had been sentenced to death by an Iranian court. They had also received information concerning the alleged execution of an 18-year-old boy, Mehrdad Yusefi, on 29 May 2001, reportedly for an offence he had committed when he was 16 years old.

Tonga

68. On 30 November 2001, the Special Rapporteur sent an urgent appeal to the Government of Tonga in relation to the situation of some 600 Chinese migrants who had allegedly been subjected to racist and violent acts and whose property was said to have been destroyed by Tongan nationals. It was also reported that Tonga's Immigration Office had requested that the Chinese families should leave Tonga for their own safety and protection.

69. By a letter dated 4 January 2002, the Government of Tonga replied to the Special Rapporteur that the country's migration policies applied irrespective of race, colour, descent or ethnic origin, adding that such policies applied equally to Chinese and to other nationalities.

Turkey

70. On 27 July 2001, the Special Rapporteur sent an urgent appeal to the Government of Turkey, together with the Special Rapporteur on torture and the Working Group on Arbitrary Detention, after receiving information on the situation reportedly experienced by 7 persons of African origin who were said to have been detained in a police round-up together with 200 other immigrants. The seven persons were reported to have been held for a week in the police headquarters in Istanbul, to have remained there in poor conditions and to have been subjected to beatings and rapes. It is alleged that while in detention they were made to sign documents written in Turkish acknowledging that they had entered Turkey from Greece. In addition, police were said to have refused access to a lawyer who tried to visit the detainees to obtain

information. It was also reported that the remainder of the approximately 200 persons detained in the police round-up were taken to the border with Greece, where the Greek police allegedly forced them to return to Turkey, and that their whereabouts and situation are unknown.

71. In a letter dated 6 August 2001, the Government of Turkey provided the Special Rapporteur with information on the above-mentioned case. The Government of Turkey stated that on 7 and 8 July a group of foreigners from diverse countries in Asia and Africa had been taken into custody. It explained that during the period of custody no form of racist or discriminatory treatment against the group of African origin had occurred. The Government of Turkey stated that those in possession of valid passports or visas had been released immediately, as well as those who had previously lodged asylum applications, and that only those who had no passports or visas had been retained in custody. Those persons had voluntarily filled in the forms presented to them. The Government of Turkey explained that during the period in which they had remained in Turkish police custody, none of them had been subjected to ill-treatment, though some of the detainees had refused the medical help and food which were offered. None of them had sought asylum in Turkey and almost all of them had acknowledged that they were in Turkey illegally and were waiting for an opportunity to enter Europe. Lastly, the Government of Turkey stated that all those who were in Turkey illegally had been deported.

B. Communications through normal channels

Spain

72. On 15 November 2001, the Special Rapporteur sent a communication to the Government of Spain concerning the situation of two children of Moroccan nationality who were reported to have been expelled from the autonomous city of Melilla to Morocco and handed over to the Moroccan police without their families or the social services being present. It was alleged that at least one of the minors was in the care of the city. Information was also received concerning 35 cases of expulsion of Moroccan children in very similar circumstances.

73. In relation to the situation in El Ejido, referred to in the Special Rapporteur's report to the Commission at its fifty-seventh session, the Government of Spain sent a letter dated 6 February 2001 setting out details of the follow-up to the agreements reached following the events of February 2000, in which a community of migrants had suffered violent xenophobic attacks and severe damage to their property and houses. The report presented to the Special Rapporteur indicated the steps taken to rehouse the affected migrants, pay compensation for their losses and begin regularizing their situation after their identity papers were lost or destroyed during the attacks. The Government also declared its intention to embark on a housing programme and described intercultural and social integration programmes in Almería. Concerning investigation of the events, the Government stated that the judicial authorities had been made aware of the events.

Indonesia

74. On 29 October 2001, the Special Rapporteur sent the Government of Indonesia a joint communication together with the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning the case of a boat which had sunk off the Indonesian coast, causing the

deaths of 356 migrants, including women and children. It had been reported that the boat had sailed from the island of Java and that, several hours after the sinking, 44 persons had been rescued. These had testified that, when they realized that the boat was becoming overloaded, they were unwilling to continue boarding, but were forced to do so at gunpoint by at least one Indonesian policeman and other men accompanying him.

75. By a letter dated 12 November 2001, the Government of Indonesia informed the Special Rapporteur that, according to information it had gathered, over 350 people of Iraqi, Iranian, Afghan, Palestinian and Algerian nationality had died in the tragic incident and that, on the strength of the survivors' testimonies, the police had arrested an Egyptian citizen who was suspected of involvement in smuggling the migrants. It was also reported that the Egyptian citizen had been aided and abetted by a local policeman and three Iraqis. According to the Government of Indonesia, the police officer in question had been detained and was helping with the ongoing investigation. The Government informed the Special Rapporteur that, according to a police reconstruction of the events, the migrants had been transported in four buses from Bogor, West Java, to the port of Bakaheuni in Merak, to Banten and then to Lampung, where they had stayed in a hotel for two days before boarding the vessel. The convoy was said to have been escorted and rigorously guarded by the police officer who had been detained and several men wearing military-style fatigues. The Government of Indonesia stated that in a bid to curb the arrival of new asylum-seekers in the country, it had limited the issue of entry permits to citizens of certain countries. The Government considered that it would be possible to counter the movement of illegal migrants in the country by setting up proper quarantine facilities, with the support of interested neighbouring countries, to discourage the use of Indonesian territory for purposes of transit.

Morocco

76. On 9 February 2001 the Special Rapporteur contacted the Government of Morocco in connection with allegations of the death of 10 migrants and the disappearance of 20 others who had sailed from the Moroccan coast in a boat which was wrecked off the coast of Spain. According to information received by the Special Rapporteur, 10 corpses were found 20 kilometres from Tarifa, in Andalusia, including the corpse of a child of 10. Estimates reported to the Special Rapporteur indicate that some 500 migrants die each year while attempting to reach Spain by sea, most of them being victims of migrant-smuggling.

C. Visits

77. At the invitation of the Government of Ecuador, the Special Rapporteur visited Ecuador between 5 and 16 November 2001. The report of her visit has been issued as an addendum to the present report (E/CN.4/2002/94/Add.1).

78. At the invitation of the Government of Mexico and the Government of the United States of America, the Special Rapporteur planned to make a joint visit to the border between the two countries, and a visit to Mexico and its southern border, between 18 September and 9 October 2001. However, as a result of the tragic events which occurred in the United States of America on 11 September 2001, the visit was postponed by agreement between the Governments of the two countries and the Special Rapporteur. The Special Rapporteur

subsequently proposed to the two Governments that the visit should be rescheduled for January 2002. In response to her suggestion, the United States Government requested her not to make the visit before the first fortnight in March, to allow time for proper preparations. The Special Rapporteur hopes that by the time this report is issued the visit to the two countries will have taken place.

79. By a letter dated 8 June 2001, the Government of the Philippines agreed to the Special Rapporteur's proposal that she should visit the Philippines within the context of her mandate. After an exchange of correspondence, the visit was scheduled between 7 and 16 February 2002. However, as a result of the adjustments made in the Special Rapporteur's timetable following the events of 11 September 2001, it was suggested to the Government of the Philippines that the visit should be rescheduled in May 2002.

D. Participation in the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Conference itself

80. In recent decades there has been an increase in displays of discrimination, racism, xenophobia and inhuman and degrading treatment against migrants in various parts of the world. For this reason, in resolution 1999/44, which sets out the mandate of the Special Rapporteur on the human rights of migrants, the Commission invited the Special Rapporteur to participate actively in the work of the preparatory committees for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance. The Special Rapporteur attended most sessions of the Preparatory Committee, the regional meetings and the seminars of experts organized in Asia, Africa, Latin America and Eastern Europe. On each occasion she reviewed the progress made and put forward recommendations relating to the migration issues which should be included in the Durban agenda and the manner in which they should be addressed from the viewpoint of the human rights of migrants.

81. During the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which was held from 31 August to 7 September 2001 in Durban, South Africa, the Special Rapporteur participated in the Seminar on Cooperation for the Better Protection of the Rights of Minorities, a round table on gender and migration and forums organized by non-governmental organizations. She was also a special guest at a forum on "Voices of Victims", where she heard testimony from victims of discrimination, xenophobia and racism.

82. Thanks to her constant presence at pre-Conference activities and meetings and during the World Conference itself, the Special Rapporteur helped to ensure that 45 paragraphs which refer to migration issues were approved in the Declaration and Programme of Action. Noteworthy among the issues covered in the two documents are: the situation of vulnerability in which migrant women and children find themselves; family reunification as a means of facilitating the integration of migrants in the host society; migrant workers, and among them domestic employees in particular; the voluntary return of migrants to their countries of origin in dignity; efforts to combat transnational organized crime networks smuggling migrants and trafficking in

persons, leading to the most degrading types of abuse and violence against migrants, and even in many cases to death; and the growing phenomenon of refugees, internally displaced persons and asylum-seekers.

83. In her statement to the plenary session of the World Conference, the Special Rapporteur acknowledged the efforts made by the World Conference in the struggle to eradicate racism, xenophobia and discrimination against the migrant population throughout the world. Notable among the recommendations made by the Special Rapporteur was that the issue of migration should be addressed jointly in the countries of origin, transit and destination, through the implementation of migration control policies and actions which, without neglecting national security or infringing on the sovereignty of each State in respect of the entry of individuals onto its territory, would avoid violating fundamental human rights, permitting or fostering discrimination or detracting from the dignity of migrants. This legislation should both prevent and combat the smuggling of migrants and trafficking in persons. At the same time, the Special Rapporteur highlighted the importance of analysing the issue of migration not only from a legal or economic viewpoint, but one embracing the human, psychological and social dimensions which make up the context within which migration takes place, and the consequences this has for the migrant, for his or her family and for the community in general.

84. The Special Rapporteur urged States to follow up and pursue the issues endorsed during the World Conference by including them in national and regional action programmes. The paragraphs adopted in the Durban Declaration and Programme of Action should form the backbone of their efforts to address the phenomenon of racism, racial discrimination, xenophobia and related intolerance. The Special Rapporteur highlighted the key importance of strengthening joint actions by Governments, international organizations and non-governmental organizations to secure effective protection and promotion of the human rights of migrants.

E. Participation in conferences and meetings

85. The Special Rapporteur participated in a variety of conferences and meetings in 2001, including the annual meeting of special rapporteurs (18-22 June), the Madrid conference on religious intolerance (23-25 November), the eighty-second session of the Council of IOM (27-29 November) and the panel on refugees and migrants organized by UNHCR and the Office of the United Nations High Commissioner for Human Rights on Human Rights Day (10 December). She was also invited to attend the European Union ministerial meeting on migration on 16 and 17 October. She took note of the efforts being made within the European Union to harmonize migration policies, the huge task involved in standardizing approaches to migration and the well-known concern of the members of the Union to combat smuggling of migrants and illegal migration. She encourages the European Union and civil society organizations to engage in a serious and thorough dialogue and exchange of experience on migration and the protection of the human rights of migrants during the process of harmonizing European policies. Her experience of other regional processes has demonstrated to her that dialogue with civil society constitutes a sound practice which offers an opportunity to exchange not only views and perspectives on the phenomenon of migration but also responsibilities, in a search for consensus among all the sectors involved.

86. In May, the Special Rapporteur visited Chiang Mai, Thailand, for a regional seminar of Asian non-governmental organizations on migrant domestic workers. This was a preparatory meeting for the regional forum being promoted by a coalition of non-governmental organizations in the region in 2002. The Special Rapporteur attaches great importance to this forum, in which States, organizations and migrants will exchange experience in this area with a view to enhancing the quality of life and effective protection of domestic employees. She welcomes the proposal made by Asian non-governmental organizations that annual regional consultations should be organized with her to examine issues of concern to them in connection with the human rights of migrants.

87. During the period under review, the Special Rapporteur also followed with interest the process initiated at The Hague by the Netherlands section of the Society for International Development on asylum and migration. This process, involving many individuals, experts, officials and academics working in the area of migration and asylum throughout the world, is aimed at the drawing up of a sort of charter of principles relating to migration and asylum throughout the world.

F. Cooperation with other special rapporteurs, treaty bodies, specialized agencies, intergovernmental organizations and other competent organizations in the United Nations system

88. During the period under review, the Special Rapporteur sent communications through normal channels and/or urgent appeals jointly with a variety of special rapporteurs, in particular the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, the Special Rapporteur on torture, Sir Nigel S. Rodley, the Working Group on Arbitrary Detention and the Special Representative of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran, Mr. Maurice Copithorne. She also held a meeting to exchange views with the Working Group on Arbitrary Detention in December 2001. The Special Rapporteur had fruitful meetings on the issues falling under her mandate with representatives of IOM and the International Labour Organization (ILO). She also had contacts with UNHCR in connection with the debate on the connection between asylum and migration, and with the World Health Organization (WHO) on the topic of interpersonal violence and migration. She appreciated the meeting between special rapporteurs and members of the treaty monitoring bodies, and hopes to be able to set up machinery for cooperating with them.

VI. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

A. Concluding observations

89. The Special Rapporteur hopes that this report will help to enhance the debate on the need to guarantee full and effective protection of the human rights of migrants. She emphasizes the great progress that has been made during the period under review in the development of strategies for the protection of the rights of migrants, and in particular the agreements reached

during the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which were published on 2 January 2001 and will be brought to the attention of the General Assembly, especially where they relate to migration and human rights.

90. The Special Rapporteur has also noted with interest the processes initiated in various regions of the world which are working towards coordinated action in the field of migration, and in particular stresses the importance of participation by civil society organizations in these processes, as well as participation by migrants themselves.

91. The Special Rapporteur has noted the growing commitment by States to integrate the protection of the human rights of migrants into their migration control policies and to ensure that such issues as the special situation of women migrants, efforts to prevent and combat smuggling and the return of migrants in dignity and security are incorporated in their dialogues in this area.

92. In this report the Special Rapporteur has underlined the seriousness of the situation which migrants must face, particularly women migrants and minors, in the context of smuggling. She has raised the serious problem of impunity enjoyed by smuggling networks and the penalization of the migrants who are their victims. The Special Rapporteur has emphasized the situation in the countries of origin, and the need to enable people to establish themselves and help the members of migrants' families who remain behind. She has also pointed to the challenge of managing migratory flows in an orderly fashion where demand for immigrants exists in parallel with action to combat transnational networks of migrant-smugglers.

93. In this report the Special Rapporteur has stressed the need to incorporate the issue of protection of human rights fully into policies for migration management and control. She has also emphasized the need for States to respect their international commitments in the field of human rights in a non-discriminatory manner, even when states of emergency have been declared.

94. The Special Rapporteur takes this opportunity to thank Governments, non-governmental organizations, international agencies, the United Nations, universities and migrants for the constant support she has received, and in particular for the exchanges she has had with them concerning the situation of migrants and the invitations to major meetings and forums on the matter, which have made a crucial contribution to the discharge of her mandate. The Special Rapporteur also thanks the Office of the United Nations High Commissioner for Human Rights for the support provided to her in pursuing her mandate during the period under review.

B. Recommendations

95. On the basis of the resolutions which established the Special Rapporteur's mandate, the following recommendations are submitted with the aim of promoting greater protection of the human rights of migrants.

96. The Special Rapporteur considers that the 45 paragraphs on the situation of migrants adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and forming part of the Conference document published on 2 January 2002

that will shortly be put before the General Assembly constitute a fundamental working agenda for addressing violations of the human rights of migrants arising from discrimination, racism, xenophobia and related intolerance.

97. The Special Rapporteur recommends that States should give priority to setting up their national programmes arising from the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, especially practical steps to protect the rights of migrant women and children, particularly against abuses committed in the context of domestic employment and smuggling and trafficking. Priority should also be given to the provisions relating to family reunification, which promotes the integration of migrants in the host countries.

98. The Special Rapporteur also considers it most important to follow up the recommendations contained in the document of the World Conference that relate to migration control policies and the protection of human rights, in particular the sections calling on States to ensure that their migration policies are consistent with their international human rights obligations and free of racism.

99. The Special Rapporteur considers that it is of fundamental importance that non-governmental organizations should continue their efforts to monitor and protect the human rights of migrants, as mentioned in the final document of the World Conference, and urges them to play an active part in the application of the provisions agreed in Durban.

100. The Special Rapporteur considers that it is of fundamental importance to follow up the provisions of the World Conference document which refer to promotion of participation by States in regional dialogue and the negotiation of bilateral and regional agreements which, in consultation with civil society, cover management and control issues and the regulation and protection of human rights.

101. The Special Rapporteur urges States to review their domestic legislation to bring it into line with their international obligations relating to the protection of human rights, especially in the matter of non-discrimination.

102. The Special Rapporteur urges States to ratify the December 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which requires only three more ratifications to enter into force. She also recommends that States should consider ratifying the United Nations Convention against Transnational Organized Crime and in particular the two protocols to it - the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Air and Sea - which constitute major instruments for combating the impunity of these transnational criminal networks and the abuses they commit against their victims.

103. The Special Rapporteur strongly recommends to States that they should continue to address the issue of the human rights of migrants using an all-round approach which takes into account the situation of the families which remain behind in the home countries, especially minors, the violations committed during migrants' journeys, particularly in the States through which they pass, and the phenomenon of smuggling, as referred to in Commission on Human Rights resolution 2001/56 on protection of migrants and their families.

104. The Special Rapporteur urges States to respect their international human rights commitments, particularly as regards respect for the non-derogable rights of every individual, and encourages them to continue promoting measures of integration for migrants. She points out that the alternative to uncontrolled migration, which can jeopardize State security and actually undermine the rights of migrants, is the orderly management of migratory flows, especially when there is real demand for migrants.

105. Regarding efforts to combat migrant-smuggling and trafficking, the Special Rapporteur urges States to develop their legislation and take concerted action to effectively punish the crimes committed by these networks, bearing in mind the aggravating circumstances when the legislation is adopted, and to refrain from penalizing the victims of smuggling in any way.

106. The Special Rapporteur recommends that States should give priority to the orderly management of migratory flows where there is real demand for immigrants, and that at the same time they should develop strategies for combating illegal migration in bilateral and regional dialogues as well as their domestic policies. She encourages States to give the protection of migrants who are victims of smuggling a prominent place in all their strategies to combat international smuggling.

107. The Special Rapporteur urges States to incorporate protection of the human rights of migrants into all their migration control policies, paying particular attention to the situation of illegal migrants in transit countries.

108. The Special Rapporteur recommends to the States in which migration originates that they should provide effective consular protection when their nationals are detained or their rights are infringed. She also recommends to all States that they should remedy situations involving the indefinite detention of migrants, whose rights may be infringed, especially when obstacles exist to their deportation.

109. The Special Rapporteur strongly recommends to States and organizations that they should give priority to addressing the situation of migrant domestic workers and draw up strategies to protect this particularly vulnerable group of migrants.

110. The Special Rapporteur recommends strengthening of the capacities of civil society and migrants' organizations, which are carrying out crucial work in helping and watching over migrants.

111. The Special Rapporteur also recommends to States that they should work together with such organizations at the national, regional and international levels to coordinate their actions in the field of protection. She also recommends the organizations to consolidate their networks at the regional and international levels to enable them to assist and effectively monitor the situation of migrants and give priority to the problems of the victims of smuggling, particularly children and women.

Notes

[1] To mention but a few, the Conference decided to urge States to:

> Review and revise, where necessary, their immigration laws, policies and practices so that they are free of racial discrimination and compatible with States' obligations under international human rights instruments (Programme of Action, para. 30 (b));
>
> Implement specific measures involving the host community and migrants in order to encourage respect for cultural diversity, to promote the fair treatment of migrants and to develop programmes, where appropriate, that facilitate their integration into social, cultural, political and economic life (Programme of Action, para. 30 (c));
>
> Urge States to take concrete measures that would eliminate racism, racial discrimination, xenophobia and related intolerance in the workplace against all workers, including migrants, and ensure the full equality of all before the law, including labour law; and further to urge States to eliminate barriers, where appropriate, to: participating in vocational training, collective bargaining, employment, contracts and trade union activity; accessing judicial and administrative tribunals dealing with grievances; seeking employment in different parts of their country of residence; and working in safe and healthy conditions (Programme of Action, para. 29);
>
> Ensure that the police and immigration authorities treat migrants in a dignified and non-discriminatory manner, in accordance with international standards, through, inter alia, organizing specialized training courses for administrators, police officers, immigration officials and other interested groups (Programme of Action, para. 30 (e)).

[2] "We reaffirm the sovereign right of each State to formulate and apply its own legal framework and policies for migration, and further affirm that these policies should be consistent with applicable human rights instruments, norms and standards, and designed to ensure that they are free of racism, racial discrimination, xenophobia and related intolerance" (Declaration, para. 47).

[3] Programme of Action, para. 26.

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SPECIFIC GROUPS AND INDIVIDUALS: MIGRANT WORKERS

Report prepared by Ms. Gabriela Rodríguez Pizarro, Special Rapporteur, in pursuance of resolution 2001/52

Addendum

Mission to Ecuador*

* The executive summary of this report will be distributed in all official languages. The report itself, which is annexed to the summary, will be distributed in the original language and in English.

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Executive summary

This report is submitted in accordance with resolution 2001/52 of the Commission of Human Rights and concerns the official visit paid by the Special Rapporteur on the human rights of migrants to Ecuador between 5 and 16 November 2001. The Special Rapporteur takes this opportunity to thank the Government of Ecuador for inviting her to visit the country and for the valuable assistance and cooperation afforded to her during her mission.

In the course of her visit, the Special Rapporteur noted that civil society in Ecuador is highly organized to address the phenomenon of migration, including associations of migrants and their families, which have considerable skills in making proposals and possess detailed knowledge of the situation regarding migration in the country and its effects. This is due in particular to the vital work of monitoring and assistance to migrants and their families accomplished by various organizations in the country.

The authorities in Ecuador and civil society organizations have found avenues of dialogue and concerted action to help in seeking joint solutions to the problems facing the country where migration is concerned. The Special Rapporteur noted that steps taken by indigenous, social and peasant organizations in their negotiations with the authorities have led to important commitments on the part of the Government, in the context of the dialogue on migration between the Government and indigenous, peasant and social organizations.

The Special Rapporteur highly values the process of cooperation between the authorities and civil society in formulating an operational plan relating to the human rights of migrants, foreigners and refugees, which has yet to be put into effect. The two initiatives mentioned, together with the National Plan for Ecuadorians Abroad, which is being drawn up by the Ecuadorian Foreign Ministry, constitute important tools for the formulation and coordination of national migration policy. These proposals have been accompanied by significant measures for the protection of migrants abroad, including in particular the signing of a bilateral agreement with Spain and approval by the Congress of Ecuador of the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

In this report, the Special Rapporteur highlights the situation of members of the families of migrants who remain in the places of origin, weighed down by debt and exploited by moneylenders who impose usurious rates of interest. The families of migrants in this situation live under the threat of being stripped of their property, and are dependent on remittances - for the most part obtained illegally - to pay what they owe. The Special Rapporteur also wishes to express her deep concern at the psychosocial effects of migration in the places of origin, particularly family break-ups and the abandonment of children and young people. She observed during her visit that many State institutions and provincial authorities have still not become fully aware of the problems experienced by this segment of the population, and considers that action by the authorities in this area should be strengthened.

Concerning the causes of emigration and the circumstances in which it takes place, the Special Rapporteur noted that the lack of opportunities for a large proportion of the population to lead and provide their families with a decent life as the result of their labours generates a

large-scale flow of Ecuadorians abroad. Extreme poverty, poor knowledge of legal ways of emigrating and the risks involved in illegal migration, and lack of proper papers, mean that the population is especially vulnerable to networks which engage in smuggling and trafficking of migrants. The Special Rapporteur noted that the smuggling of Ecuadorian migrants has reached acute levels and that smuggling networks operate with impunity.

The Special Rapporteur was provided with many accounts of the abuses to which migrants are subjected during smuggling. Migrants' families reported cases of disappearance, abandonment in transit and sexual abuse of women and minors. She also learned of the risks encountered by migrants during their journeys, the fact that migrants are treated as criminals in some transit countries, and the fact that their rights are not protected in their countries of destination because of their illegal status.

Concerning immigration to Ecuador, the Special Rapporteur heard expressions of concern from various sectors of Ecuadorian society at the rise in xenophobic sentiments, particularly vis-à-vis immigrants of Colombian nationality. On the border, it was reported that such sentiments are becoming more acute as the conflict in Colombia and the application of Plan Colombia affect security and economic well-being in the region.

In the prison system, the Special Rapporteur noted with concern the situation of many foreign detainees who benefit from no representation from their countries' consuls. She was provided with testimony from persons unable to speak English or Spanish who had been tried without even being able to communicate with their defence counsel, in the absence of interpreters for their languages. Most detainees in such situations come from African, East European and Asian countries. The Special Rapporteur also encountered foreigners imprisoned for ordinary offences who, though they claimed to have served their sentences, remained in prison because they had no travel documents or money for the journey home.

Recommendations

The Special Rapporteur considers that combating illegal migration should be a priority in Ecuadorian policy, and that coordinated actions on the part of the State should be devised in order to check corruption and the impunity enjoyed by the networks. The principal focus of this policy should be coordinated action by the system of administration of justice and the police, as well as prevention through local development programmes backed up by the international community.

The Special Rapporteur considers that there is a fundamental need to enhance the State's ability to address the needs of the families of migrants who are located in the areas where illegal migration originates, and to strengthen the work being accomplished by the Ombudsman in addressing the problems encountered in the areas of origin, including prevention of smuggling. She recommends the implementation of psychosocial programmes to help the families of migrants, and an active policy of providing advice on how to invest remittances productively, in joint efforts by State institutions, civil society and the international community. She also recommends that the fund set up under the programme for the development of Ecuadorian migrants and their families should be brought into operation, together with other initiatives designed to facilitate access to credit.

The Special Rapporteur deems it important to examine appropriate legislative reforms to bring national standards into line with the commitments entered into by Ecuador in the field of human rights, especially in the light of the Ecuadorian Congress's recent approval of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. In particular, she considers that the Migration Act should be revised to ensure that it does not contain discriminatory criteria which exclude foreigners, and that consideration should be given to introducing legislative reforms so that deportation orders are subject to administrative or judicial review and that victims of smuggling on Ecuadorian territory are not penalized. She is of the view that Ecuador should seek solutions to the situation of foreign migrants who claim that they remain in detention although their release has been ordered.

The Special Rapporteur encourages Ecuador to continue concluding bilateral agreements to regulate migration by its nationals abroad, and to coordinate with the Ministry of Labour all matters relating to migrant workers. She recommends that Ecuador should include in its negotiating strategy dialogue with transit States involved in migration by Ecuadorians, in order to apply measures of protection for its citizens, the effective investigation of abuses, the non-penalization of victims of smuggling and a multilaterally coordinated strategy for preventing and combating smuggling.

The Special Rapporteur considers it important that civil society and indigenous, social and peasant organizations should pursue the dialogue initiated with the State. She encourages the State to continue to fulfil the commitments it has assumed in this area and to pursue the dialogue it has begun with migrants and civil society organizations.

Lastly, the Special Rapporteur recommends that the international community should provide support to Ecuador in its efforts to promote and protect the human rights of migrants and their families.

Annex

Introduction

1. The Special Rapporteur on the human rights of migrants visited Ecuador from 5 to 16 November 2001 at the invitation of the Government of Ecuador. The Government had issued the invitation following a request made to all Governments by the Special Rapporteur, at the beginning of her mandate, announcing her appointment and enumerating the provisions of the resolution which set out the mandate requesting Governments to cooperate with the Special Rapporteur and to consider the possibility of inviting her to visit their countries. The visit to Ecuador was the second such visit made by the Special Rapporteur.

2. The Special Rapporteur takes this opportunity to thank the Government of Ecuador for inviting her to visit the country and for the valuable assistance and cooperation afforded to her. Prior to the mission, she and her supporting staff contacted the Permanent Mission of Ecuador to the United Nations Office at Geneva, which played a major role in planning and facilitating the visit and confirmed the final dates of the visit in a letter dated 20 September 2001. The Ecuadorian authorities granted all the requests she made for meetings, and the mission took place in an atmosphere of transparency and openness. She also wishes to express her sincere appreciation for the assistance provided by the United Nations Development Programme (UNDP) and by the many non-governmental organizations and individuals whom she had an opportunity to meet during her stay in Ecuador.

3. It is not intended that this report should provide a thorough and specialist investigation, since its scope is restricted to the mandate conferred on the Special Rapporteur. The aim of the report is to stimulate a broad discussion on the situations facing the migrants described here. The conclusions and observations set out in the report are based on the information gathered during the mission and on relevant international norms. In this regard, the Special Rapporteur has paid special attention to the circumstances and impacts of illegal migration and smuggling of migrants in Ecuador, the situation of families in the places of origin of migration, and immigration into Ecuador, within the framework of the human rights of migrants.

I. PROGRAMME OF THE VISIT

4. The Special Rapporteur held meetings with officials from the Ministry of Foreign Affairs, the Ministry of Labour, the Ministry of the Interior and Police and the Ministry of Social Welfare, as well as the Commissions of the Congress on International Affairs, Human Rights, Women, Children and the Family and Indigenous Affairs and other ethnic groups. She also held meetings with staff of the Ombudsman's office and non-governmental and social organizations, and with representatives of the academic world in Quito, Cuenca and Guayaquil. Throughout her visit she held meetings with members of the families of migrants, women migrants and minors affected by migration. She visited prison institutions, where she spoke to migrants in detention. She also met the Sectoral Sub-Commission on the Operational Plan relating to the Human Rights of Migrants, participants in the dialogue on migrants and the Advisory Commission on Migration. She met officials from various government bodies including migration bodies, the Ombudsman's office and the National Institute for Children and the Family in Santo Domingo de los Colorados, Cuenca, El Cañar and Guayaquil. In these two last towns,

she also met representatives of the Ministry of Social Welfare. During her visit the Special Rapporteur had an opportunity to meet representatives of the international community, United Nations agencies, the International Organization for Migration (IOM) and some international non-governmental organizations, as well as the consuls of a number of countries.

5. During the first part of her visit, from 5 to 9 November, the Special Rapporteur held meetings with officials and agencies in Quito. On 5 November, following a short coordination meeting in the UNDP offices in Quito, she held a first meeting with Ambassador Luis Gallegos, Under-Secretary for Political Affairs in the Ministry of Foreign Affairs, Ambassador Paulina García Donoso de Larrea, Under-Secretary for International Agencies, Ambassador Francisco Proaño, Director-General for Human Rights in the Ministry of Foreign Affairs, Ambassador Fernando Córdoba, Adviser on Migration Issues in the Ministry of Foreign Affairs and Minister Alfonso Morales, on behalf of Ambassador Carrión, Director-General for Ecuadorians Abroad.

6. Also on 5 November the Special Rapporteur held a meeting with the Sectoral Sub-Commission on the Operational Plan relating to the Human Rights of Migrants. Participants were: Col. José Vicente Venalcazar, Director-General of Migration; Col. Mauro López, Liaison Official of the National Police and the Ministry of Foreign Affairs; Wilson Mayorga, of the National Directorate of Human Rights of the Ministry of the Interior and Police; Tania Cedeño, of the Regional Foundation for Advisory Services in Human Rights and the Regional Institute for Advisory Services in Human Rights (INREDH); Susmara Solis, Coordinator of the National Council for Women (CONAMU); Daniela Balsera, of the Pro-refugees Committee of the Department of Human Mobility of the Ecuadorian Episcopal Conference; Pepe Torres and Edmundo Terán, of the World Association of Ecuadorians Living Abroad (ERE); José Egas of the Committee for Aid to Persons Displaced by Violence; José Sieber, Protection Officer in the Office of the United Nations High Commissioner for Refugees (UNHCR); and Rosa de García, Director of the IOM programme in Ecuador.

7. During a lunch organized by the Foreign Ministry, the Special Rapporteur had an opportunity to talk to Hugo Moreno, Chair of the International Affairs and National Defence Commission of the Congress; Bolivar Sánchez, President of the Congress's Commission on Human Rights; and Minister Galo Larrea, Director-General for Consular Affairs. Also present were Ilona Szemzo of UNDP and Rosa de García of IOM. In the Ministry of Foreign Affairs the Special Rapporteur held a meeting with the units responsible for migrants' affairs. At the end of her first day in Quito, in IOM, she met Augusto Mariategui, Director-General of the IOM regional office for the Andean Community, and IOM officials assigned to Ecuador.

8. On 6 November a meeting was held between the Special Rapporteur and civil-society organizations, including Ecuadorian migrants' organizations. The organizations represented included: the Ecuadorian Episcopal Conference, the Standing Assembly of Human Rights, the Children's Forum, Cooperazione Internazionale, Rumiñahui, the Regional Foundation for Advisory Services in Human Rights (INREDH), the Segundo Montes Mozo Centre, the Pueblo Indio Foundation and the Ecumenical Commission for Human Rights. She also held a brief meeting with Dr. Heinz Moller, the Minister for Foreign Affairs, with whom she conducted

a joint press conference in the Ministry. Unfortunately, it was impossible to hold the meeting with the Foreign Minister scheduled for the afternoon of 6 November for the purpose of further discussions with the Special Rapporteur. At a meeting to which academic bodies in Quito were invited, representatives were present from the Latin American Faculty of Social Sciences (FLACSO), the Private Technical University of Loja and the Andean University. The Special Rapporteur also held a working dinner with the Episcopal Conference's Pastoral Office of Human Mobility. She was able to meet Dr. Martín Insua Chang, the Minister of Labour and Human Resources, and Dr. Ernesto Pazmiño, the Under-Secretary in the Ministry of Social Welfare. A meeting held in the Ministry of the Interior and Police was attended by Dr. Marcelo Merlo Jaramillo, the Minister of the Interior and Police, the Commandant General of the National Police, the Director of the Aliens Office and the Director-General of Migration.

9. On 7 November the Special Rapporteur visited the García Moreno prison in Quito and the Pre-trial Detention Centre. On 8 November she held a working breakfast with Hugo Moreno Romero, Chair of the International Affairs Commission of the Congress, and representatives of the Commission on Women, Children and the Family. She also held a meeting with Claudio Mueckay, the Ombudsman, which was attended by the Indigenous People's Ombudsman, the Director of the National Directorate for the Defence of the Rights of Migrants in the office of the Ombudsman, the North America representative of the Ombudsman, the Legal Adviser to the Ombudsman and the head of the office of public defender for the prison system. She also met representatives of United Nations agencies operating in Ecuador, notably UNDP, UNHCR, the World Health Organization (WHO), the United Nations Population Fund (UNFPA), the World Food Programme (WFP) and the United Nations Development Fund for Women (UNIFEM).

10. On 8 November a working lunch was held with Humberto Romero Montalván, Director of the Aliens Office in the Ministry of the Interior and Police, who chairs the Consultative Council on Migration. A meeting was held later with representatives of public bodies and international agencies which jointly coordinate projects dealing with migrants and their families. It was attended by Gabriel Alom, who handles consular matters in the Embassy of Spain, representatives of the Netherlands Cooperation Service, IOM, CONAMU, the Office of the Director for Protection of Minors in the Ministry of Social Welfare, the Office of the Director-General for Migration and the National Institute of Children and the Family (INFA). The Special Rapporteur's programme also included meetings with deputies Ximena Ortiz Crespo, who deals with migrants issues in the Congress's Commission on Human Rights, and Guilberto Talahua Paucar, Chair of the Congress's Commission on Indigenous Affairs and other ethnic groups.

11. On 9 November a meeting was held with the Inter-institutional and International Adviser on Development Cooperation of the Municipality of Santo Domingo de los Colorados, Capt. Carlos Torres, Chief of Migration in the National Police of Santo Domingo, the Ombudsman of Santo Domingo and a representative of INFA. Regrettably, it was not possible to hold the scheduled meeting with civil-society organizations in Santo Domingo, because of slippage in the programme. In the United Nations office, the Special Rapporteur met representatives of indigenous organizations and later met the consuls of Bolivia, Italy and Colombia.

12. Between 10 and 12 November the Special Rapporteur visited the south of the country. In Cuenca, she held a meeting attended by: Monsignor Luis Alberto Luna Tovar, Chair of the Azuay Commission on Human Rights; Luis Urguiles, Ombudsman of Azuay; Milton Ordóñez, Ombudsman of El Cañar; Fernando Vega, curate of the Pastoral Social Office; and Franklin Ortiz of the Pastoral Office of Human Mobility. Many civil-society organizations participated, including the Ecumenical Commission on Human Rights, the Inter-American Forum on Human Rights (FIDEH), the Azuay Movement for the Defence of Migrants, the World Association of Migrants and the Pajara Pinta Organization. The meeting was also attended by members of the families of migrants, especially migrants who had disappeared or had been detained in transit countries. In Azogues, the Special Rapporteur was received by Ruth Abad de Brito, the Governor of El Cañar, and other officials. She visited Paute and San Marcos, two communities which are the homes of Ecuadorian migrants abroad. In the same afternoon, in Cuenca, she received testimony from members of the families of migrants who had been detained in countries through which they were passing on their way to the United States of America. In Cuenca, on 12 November, she held a meeting in the Governor's office with Ricardo Muñoz Chávez, the Governor of Azuay, and other officials. In the University of Cuenca, she was received by Dr. Jaime Astudillo Romero, the Rector, who gathered together members of various faculties in which research programmes of migration are pursued.

13. On 13 November the Special Rapporteur travelled to Guayaquil. She met Marcos Ruinruil, the political head of the canton of Guayas, representing the Governor, Dr. Eduardo Franco Lool, Under-Secretary for Social Welfare for the coastal region, Maj. Renato Noboa, Deputy Chief of Migration, and Francisca Arizaga Pareja, Deputy Regional Director of Social Communication in INFA, Guayaquil. She also held a meeting with representatives of civil-society organizations in the coastal region, including the office of the curate of the Guayaquil Pastoral Social Office, the board of the Department of Welfare of the University of Guayaquil, the Standing Committee on Human Rights of Guayaquil and the Committee of Foreign Students.

14. The Special Rapporteur spoke to migrants in the Coastal Prison Centre, the Pre-trial Detention Centre and the Women's Centre for Social Rehabilitation. She later held a meeting with Franklin Noreno Quezada, the Ombudsman of Guayas.

15. In Nueva Loja (Lago Agrio), on 14 November, the Special Rapporteur met Maj. Espinoza, the Provincial Head of Migration for Sucumbios, and Lt. Garces, Provincial Head of Migration for General Farfán. She spoke to a Colombian migrant who had been detained that morning because he had no papers; he had been living in Ecuador for two and a half years. She also had an opportunity to briefly meet Manuel Chávez, the Ombudsman of Sucumbios, and held a lengthy meeting with representatives of civil-society organizations and individuals, represented in the Civil Society Assembly, and with the Human Rights Office of the Pastoral Office of Human Mobility. On 15 November she met officials of UNHCR, IOM, the Red Cross, Médicos sin Fronteras and Terre des Hommes in Sucumbios. She also met the Bishop of the province, Monsignor Gonzalo Mareñón.

16. In the afternoon of 15 November the Special Rapporteur attended a meeting to mark the end of her visit with officials from the Ministries of Foreign Affairs, the Interior and Police, Social Welfare, and Labour and Human Resources, as well as INFA and CONAMU.

Participants included Camilo Restrepo, Director of the National Directorate for Defence of the Rights of Migrants in the office of the Ombudsman; Galo Larrea, Minister and Director-General of Consular Affairs in the Foreign Ministry; Jorge Icasa, Director-General for Migration Affairs in the Foreign Ministry; and Amparo Ponde, Director of the Decentralized Territorial Unit of Pichincha. Later she briefly met Ms. Aase Smedler, the United Nations Resident Representative.

17. On 16 November a meeting to review the visit was held with Ambassador Luis Gallegos, the acting Foreign Minister, at which the Special Rapporteur expressed appreciation for the welcome she had received.

II. THE GENERAL CONTEXT OF MIGRATION IN ECUADOR

18. Ecuador is a party to the principal United Nations international human rights instruments.[1] The Special Rapporteur was informed during her visit that the Commission on International Affairs and National Defence of the Congress had approved the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which should therefore be ratified shortly. Ecuador has not ratified the United Nations Convention against Transnational Organized Crime, or the two protocols to it.[2] However, the Special Rapporteur was informed that efforts in that direction are under way in the Congress.

19. Article 11 of the Constitution of Ecuador provides that "the State shall endeavour to protect Ecuadorians who are abroad". Article 23 lays down "the right to cross the national territory freely and to choose one's residence", adding that "Ecuadorians shall enjoy freedom to enter and leave Ecuador". Article 23 also prohibits trafficking in persons in all its forms (para. 4).

20. The Migration Act,[3] the regulations issued in pursuance of the Act,[4] and the Aliens Act[5] are the principal texts which regulate matters relating to migration. The Migration Act governs the organization and coordination of services relating to entry into and exit from the country by nationals or foreigners, and is implemented by the Ministry of the Interior and Police and, through the Ministry, the office of the General Commander of the civilian police.

21. Four main State agencies are responsible for migration policy. The Office of the Director-General for Aliens and the Office of the National Director for Migration both fall under the Ministry of the Interior and Police, while the Office of the Director-General for Migration Affairs and the Office of the Director-General for Ecuadorians Living Abroad form part of the Ministry of Foreign Affairs. There is also a Consultative Council on Migration Policy, comprising the above-mentioned bodies and other ministries concerned.

22. The Government of Ecuador informed the Special Rapporteur that in August 2000 it had suggested to the Government of Spain that bilateral negotiations should be started on an agreement to regulate migratory flows between the two countries and create a special regularization process for Ecuadorian citizens. The Special Rapporteur was informed that on 25 January 2001 a range of measures had been agreed by the two countries resulting in regularization of the status of 25,000 Ecuadorians.

23. On 29 May 2001 the two countries signed an agreement relating to the regulation and management of migratory flows which lays down rules for the acquisition of legal status, the regulation of migratory flows in an ordered and coordinated manner, respect for the rights of migrants, and promotion of opportunities to return with dignity. The Foreign Ministry pointed out that negotiations have also been initiated with Italy. In this context, the Ministry of Labour emphasized to the Special Rapporteur the importance of ILO Convention No. 97 concerning Migration for Employment (Revised 1949) and the role that the Ministry should play in the preparation of conventions for the regulation and management of migratory flows with host countries (such as Spain), in coordination with the Foreign Ministry.

24. The agreement on permanent migratory status between Colombia and Ecuador, which was concluded in August 2000, lays down that nationals of the two countries may enter either country without a visa for 180 days each year, the sole requirement being the presentation of a national identity document. The two countries have granted migrants the same rights, guarantees and civil obligations as their nationals.

III. THE CONTEXT OF EMIGRATION FROM ECUADOR

25. Ecuador has a population estimated at 12,646,095.[6] The Foreign Ministry informed the Special Rapporteur[7] that in 1999 the rate of unemployment was an unprecedented 14.4 per cent. The number of households in which consumption stood below the poverty line rose from 34 per cent in 1995 to 48 per cent in 1998 and 56 per cent in 1999. Between 1995 and 1999 the incidence of destitution grew from 12 per cent to 21 per cent in the country as a whole, so that one in five Ecuadorians now live in households which cannot even feed themselves. These factors, taken together with the foreign debt burden, are the cause of emigration by Ecuadorians, in the view of the Foreign Ministry. The Congress's Commission on Indigenous Affairs reported that the country's per capita debt is currently the highest in Latin America and that 9 out of every 10 members of the indigenous population are poor. The Special Rapporteur was concerned to receive information from representatives of civil society indicating that there is a discrepancy between the country's legal framework (which guarantees economic, social and cultural rights) and actual practice. The *Alternative Report on Economic, Social and Cultural Rights*[8] records that most Ecuadorians are unable to fully exercise and enjoy their human rights (education, health, work, housing, food and social security).

26. Statistics prepared by the office of the National Director for Migration show that in 2001,[9] more Ecuadorians left the country than entered it - 393,563 against 288,610. There are serious difficulties involved in estimating the total number of Ecuadorians abroad because of the large flows of illegal migration. However, the Special Rapporteur noted from the information she received that a rough total of 1.8 million Ecuadorians are possibly abroad, equivalent to almost 15 per cent of the population of the country.

27. The phenomenon known as *coyotaje* or (in official United Nations terminology) the smuggling of migrants by land, sea and air places Ecuadorians who leave the country in a situation of acute vulnerability. In conversations the Special Rapporteur noted that leaving the country illegally using the *coyotaje* system is regarded by the population as the normal way of emigrating. The networks which smuggle migrants operate from the migrants' place of origin

and comprise a chain of agents stretching right up to the moment of arrival in the country of destination, including moneylenders, transporters, those who falsify papers and those who smuggle people across the border. There are routes by air and sea from Ecuador to the United States via Central America and Mexico, and to Europe, especially Italy and Spain.

28. The Special Rapporteur noted that the smuggler's activity begins with the preparation of false papers or the sale of false visas for genuine passports. She heard reports that smugglers make use of legal documents authorizing the departure of minors, as well as illegal documentation in which the age, name and nationality of the minor are false.[10] The activities of the smugglers are supported by those of the moneylenders. These agents lend money to people of limited means at usurious interest rates and create situations in which the members of migrants' families who remain behind are veritably oppressed by debt. Because they are illiterate, many such family members sign pieces of paper which are blank or contain statements they do not understand, with the result that houses and land are signed over to the usurer.

29. In the case of smuggling by sea, the smugglers make sure they assemble a large number of migrants, whom they transport by bus to the Ecuadorian coast, to wait in houses, hostels or hotels from which the networks operate, for an appropriate moment to board ship. Some persons reported that migrants make a second payment to the captain or his crew. The same procedure is followed in the case of smuggling by air, but at the individual level. The individuals are transported to Quito or Guayaquil, where they wait in hotels or hostels (with which an arrangement has been made) until they are moved to the international airports. The documents which they use to travel are normally given to them at the last minute. The sums reported in connection with the total amount paid to the smugglers range between US$ 8,000 and US$ 19,000. The Special Rapporteur also received information indicating that some travel agents serve as a screen to conceal smuggling of migrants, offering documentation and visas together with air tickets.

30. The Special Rapporteur was informed that the Congress has revised article 440 of the Penal Code in order to categorize this smuggling as an offence.[11] The Commandant General of the police described the difficulty of intercepting groups of people when they are travelling within Ecuador with the aim of leaving the country illegally with the help of smugglers, owing to the duty of the authorities to uphold the right to free movement of persons. The Ombudsman conveyed to the Special Rapporteur his concern that in some transit countries, the police and smugglers negotiate the handing over of some groups of migrants in return for the passage of others. A cause for concern is the information received by the Special Rapporteur relating to alleged collusion by some members of the Ecuadorian security forces, who facilitate illegal departures in return for money.

31. In the south of Ecuador, many migrants' families say they do not know the whereabouts of their relatives, whether they have been detained, or whether they have died in the attempt to emigrate. They do not know the names under which their relatives travelled, or the route taken. They also told of extreme forms of abuse in the transit countries, the sexual abuse of women, imprisonment with criminals or in inhuman conditions, extortion and ill-treatment by police authorities, etc. Civil-society organizations in the south called on the Special Rapporteur to highlight the absence of machinery to investigate such abuses and the need to create transparent machinery to establish the whereabouts of the migrants.

32. A matter of grave concern is the information received by the Special Rapporteur concerning the situation of women migrants and minors who are sexually abused by smugglers as part of the price they have to pay. The need to leave the country exposes the women to harsh forms of abuse by these networks and by the security or migration officials in the countries of transit and destination.

33. The migrants' families also described the oppression they experience vis-à-vis the usurers, who collect between 6 and 8 per cent interest each month, and the existence of a network of lawyers linked with the networks of smugglers, who pressure the migrants to pay by threatening to seize land, houses and property. In the face of this phenomenon, it is important to emphasize the difficulties reported by Ecuadorians in obtaining credit through official channels. In this context it will be important for the Government to fulfil the commitment it entered into in the initial agreements concluded as part of the dialogue on migration between the Government and indigenous, peasant and social organizations relating to the establishment of a fund under the programme for the development of Ecuadorian migrants and their families. Against the background of these problems, the Special Rapporteur received accounts from young people who have debts ranging from US$ 18,000 to US$ 40,000 and who find themselves in a vicious and perverse circle of dependence on the smugglers. The smugglers promise to make three attempts at entering the target country when they conclude a deal with migrants. When the first attempt fails, the only way the young people and migrants in general have of paying their debt is to try again, so that they are wholly dependent on the smuggler to pay what they owe. The "three attempts" promise also affects the ability of migrants to denounce networks of smugglers and usurers.

34. The Special Rapporteur noted that remittances are not used for activities that are productive or generate jobs, but rather for superfluous expenditure, which facilitates drug addiction among young people and, as a result, the abandonment of studies. In this regard the Special Rapporteur was most interested in information supplied by Netherlands aid officials concerning income-generating programmes being implemented in areas affected by high levels of migration, as well as other initiatives by bodies such as CONAMU and UNDP. IOM informed the Special Rapporteur of the ways in which it is advising the Government on the implementation of programmes which could be of benefit to migrants' relatives who remain behind.

35. A serious problem which stood out during the Special Rapporteur's visit is the impunity enjoyed by the networks of migrant-smugglers. The Governor of Azuay said that his office is working with the civil registration authorities to ensure better monitoring of the issue of documents. The Special Rapporteur was informed that many people make use of agents to handle their papers and do not become involved in procedures personally. The Governor also said that meetings had been held with the association of travel agents to alert them to the problem of smuggling and encourage them to gain thorough knowledge of their clients. The acting prefect of El Cañar said that the police were aware of, and had lists of the names of, some 30-40 highly influential people in the area who are involved in smuggling migrants. In the office of the Governor of Guayas, the deputy chief of migration for the coastal area explained the role of the police in preventing and suppressing the phenomenon of illegal migration and smuggling, as well as the lack of personnel and logistical facilities to tackle the problem. As an example, it was reported that in the province of Manabi, where various smuggling networks are active, there

are only eight men assigned to the Migration Police. The Special Rapporteur learned that in Guayas the Migration Police are responsible for monitoring the official ports used for entering and leaving the coastal region. It was reported that there is no infrastructure for monitoring unofficial departures of vessels and preventing smuggling.

36. The Special Rapporteur is concerned at the fact that the revision of the Penal Code has had no impact on punishment of the networks of smugglers in the country, and that full account has not been taken of the problem of illegal migration in the country's institutions and public policies, especially in the interior. The despair of migrants' families and family break-ups, among other problems, seem to be worsening as a result of the failure of institutions to respond to smuggling and usury. In this regard, praise is due to the organizations of migrants, families, the communities themselves, civil-society organizations and such bodies as the Pastoral Office of Human Mobility and the Ombudsman's office for the huge effort they are making to address this dehumanizing problem. These efforts are accompanied by deep understanding of the reality of migration and considerable skills in making proposals on the part of civil society, which should be harnessed and should be heeded by the authorities in order to underpin their policies to combat smuggling of migrants. In this regard, the civil-society organizations warned the Special Rapporteur of the effects being produced by lack of effective legal remedies in the face of smuggling in the regions that are home to the migrants, which are beginning to experience incidents of parallel or "do-it-yourself" justice, extending even to the hiring of assassins to avenge rights that have been violated.

37. The resources of the Ombudsman's office in the areas from which migration originates need to be strengthened so that it can continue its work in protecting citizens with real institutional support. There is a need for the State to place priority on combating the networks of smugglers and preventing illegal migration in view of the abuses suffered by migrants in this context. This prevention effort should be multifaceted. In this regard, the Special Rapporteur attaches importance to the initiative taken by the Foreign Ministry, backed by advisory services from IOM, to issue a new passport with new features that make counterfeiting difficult. Added to these measures is the idea of creating an identity document for Ecuadorians abroad, which would be issued by consulates.

38. Mention should be made of the National Seminar on the Human Rights of Ecuadorian Migrants, held in Cuenca in February 2001, and attended by representatives of civil-society organizations, the Ecuadorian Foreign Ministry and IOM. The participants found that, far from enhancing their quality of life, illegal migration exposes Ecuadorians to serious violations of their rights committed in the context of smuggling, and abuse of the families who remain behind. They concluded that legal migration should be encouraged and promoted, in a context of complete respect for fundamental rights.

39. The Special Rapporteur highly values resolution 2001/56 adopted by the Commission on Human Rights on 24 April 2001, which was sponsored by Ecuador, and especially paragraph 2, in which the Commission "encourages States of origin to promote and protect the human rights of those families of migrant workers which remain in the countries of origin, paying particular attention to children and adolescents whose parents have emigrated", and "encourages international and non-governmental organizations to consider supporting States in this regard".

40. Finally, mention should be made of the meetings the Special Rapporteur held with members of the academic world. In Quito she noted a certain lack of connection between the social realities in the country in terms of emigration, on the one hand, and the research and teaching functions of the universities on the other. In Cuenca, she was informed that the Faculty of Medicine of the University of Cuenca is conducting a study on migration and AIDS. A diagnostic study on stress in migrants' families is also under way. In the Faculty of Economics a project has been agreed with the European Union to study the impact of remittances on local development, and existing mechanisms for formalizing debts entered into by the inhabitants are being studied in a joint initiative with a mutual society in the area. The Special Rapporteur underlined the need for the academic world to demonstrate leadership by drawing up creative proposals in the psychosocial, economic, legislative and political spheres to deal with the effects of illegal migration and its prevention. In addition, academics can play a vital educational role in raising awareness among the population, the State, the media and society as a whole of the rights of migrants and the members of their families and the dehumanizing effect of illegal migration, as well as the long-term impact on the country in terms of its productive capacity, the brain drain and disintegration at the family and social level.

A. The impact of emigration on places of origin

41. The mayor of Azogues described the situation in the migrants' places of origin as one of "collective anguish". The Special Rapporteur's visit to the communities there confirms this view. In Paute, members of the community told her that a child of 13, whose parents had emigrated, had committed suicide, and other suicide attempts were known to have occurred. They explained that the situation of women is particularly difficult, owing to social and psychological pressure and the fact that they were harassed by their husbands' families for control of the money remitted by the husbands. They said that many of them had been forbidden to organize in groups or leave their homes. The community of Paute attributes the high levels of migration by Ecuadorians to lack of access to basic services such as education and health, and especially the lack of jobs. They also say that corruption and debt servicing are the main factors preventing the Ecuadorian people from developing in their own country.

42. The summary of the Equal Opportunities Plan drawn up by CONAMU, which was presented to the Special Rapporteur in Cuenca, states that women who stay behind as heads of single-parent households take on new roles in the sphere of production and in the community. However, men continue to control the resources of such women and decision-making in all aspects of their lives. Children are obliged to take on huge tasks which are inappropriate to their age, and which are assigned according to sex. They are also subjected to physical, psychological and sexual abuse by relatives or neighbours who still control them. Yet some women also report that migration by members of their families gives them an opportunity to participate more freely in community activities, exercise leadership and take their own decisions within and outside the home.

43. In San Marcos, the Special Rapporteur was received by the community, which was waiting for her in the town square. Members presented heart-rending accounts of the lives led by migrants and their families. In particular, the Special Rapporteur listened to children who did not know their parents. She also received a collection of letters written to the migrants by young people deploring the emotional vacuum in which they were left as a result of the absence of their

fathers and mothers. They viewed migration as negative because it destroys homes and makes the population suffer. Indeed, many would-be migrants die in the attempt, leaving behind widows, widowers and orphans.

44. A young women described her attempt to emigrate and an accident in which she was involved when she was being transported by traffickers in Mexico. She lost a friend with whom she was travelling in the accident. She explained that despite her broken bones she had been held in detention in Mexico City, where she had suffered other abuses at the hands of the prison authorities.

45. The fact that most of the families in these communities have members involved in illegal migration means that reunions or periodic visits are out of the question. Grandmothers are afraid that they will die without seeing their grandchildren and without bidding farewell to their children. They reported that the host countries refuse to grant them entry visas to visit their relatives, since they have no bank accounts or wage-paid jobs. The case was mentioned of an illegal migrant who was involved in an accident at work in the United States, as a result of which he was paralysed. His wife has to raise five children and at the same time find a way of obtaining a visa on humanitarian grounds in order to travel to the United States to look after her husband. Because of the debts this woman has already incurred she is unable to borrow more to pay the smugglers to take her to see her husband. Meanwhile, because of her husband's illegal status in the United States, he has received no compensation for the accident.

46. The families suffer the burden of the debt left behind by their relatives, and the distress it causes, as well as constant harassment by the usurers and their lawyers. Illiterate indigenous women showed papers on which they had placed their thumbprints, giving up property and land. Lastly, mention was made of cases which demonstrate the difficulty and expense of repatriating bodies to Ecuador. One of the civil-society organizations proposed that the cost of the new passport to be issued in May 2002 should include insurance in the event of death to cover repatriation of the body.

B. Cases of trafficking and smuggling of minors reported to the Special Rapporteur

47. The Special Rapporteur was provided with information allegedly gathered in 1999 concerning trafficking in minors, including a high percentage of indigenous minors, from the coast of Ecuador allegedly to Japan. According to the information provided to the Special Rapporteur, this network operates using cruise ships visiting Ecuador and the Galapagos area. The traffickers are said to offer young people in Ecuador and their families US$ 6,000 for a year's work in Japan as Spanish teachers or domestic employees. The families hand over their children in exchange for the sum agreed. The children are then taken by ship to Japan, where they are reported to be enslaved in the sex industry. Reports have also been received of networks trafficking in indigenous children who are allegedly taken to Venezuela and Uruguay to work selling handicrafts or as members of networks of street beggars.

IV. THE CONTEXT OF IMMIGRATION INTO ECUADOR

48. The Special Rapporteur was provided with information that the countries generating the greatest volume of migration to Ecuador include Colombia, with which there is a long tradition

of migration in both directions. In the interviews she held, the Special Rapporteur was informed that there is great concern in various circles at the growth of xenophobic sentiments directed towards Colombian migrants, who are often regarded as being involved in crime or drug trafficking. On the border, it was reported that such sentiments are becoming more acute as the conflict in Colombia and the application of Plan Colombia affect security and economic well-being in the region. The Foreign Minister informed the Special Rapporteur in this connection of a development programme along the northern border which the State is implementing together with IOM and USAID and which is said to make a direct contribution to stability and consolidation in the provinces of Carchi, Esmeraldas and Sucumbíos. IOM reported that the purpose of the programme known as "Strengthening of communities in the northern provinces of Ecuador" is to conduct activities that provide real and sustainable benefits to the local population, such as improving health conditions, promoting development by upgrading transport arteries and meeting the needs of displaced population groups coming from Colombia.

49. The Special Rapporteur was provided with information concerning the situation of Colombians fleeing from their country as a result of the internal conflict and the implementation of Plan Colombia. A total of 4,281 Colombians sought refuge between January 2000 and 31 October 2001. Of these, a total of 2,106 cases are under consideration, 1,620 have already been accepted as refugees and 555 have been denied refugee status. The regulations for the application in Ecuador of the rules contained in the 1951 Geneva Convention on the Status of Refugees and the 1967 Protocol to it established a commission to determine refugee status, composed of two officials from the Foreign Ministry and one from the Ministry of the Interior. A representative of UNHCR participates as an observer. The law provides that persons granted refugee status are issued with a 12-IV visa, on the basis of which they can request the Ministry of Labour to issue an employment card to enable them to work. It also provides for appeals to the Foreign Ministry against denial of refugee status.

50. In Sucumbíos, the Provincial Head of Migration informed the Special Rapporteur that very few Colombians are officially registered or enjoy proper status as migrants in the region. It was also reported that between September 2000 and February 2001, the number of persons entering Ecuador from Colombia doubled from 600 a month to 1,400. The Provincial Head of Migration said that a large proportion of those affected by violence in Colombia make use of Ecuadorian territory as a transit zone and return home through other border crossings. Others fleeing the armed conflict in the neighbouring country do not seek refugee status because they make use of family ties or friends to settle locally, sometimes temporarily until they can return home. Others again head for cities inside Ecuador, because of the lack of jobs in the area of Lago Agrio - the cause of the economic depression affecting the town, the Special Rapporteur was told, since the dollarization of the economy, the rise in violence in Colombia and the application of Plan Colombia, which have had an impact on trade.

51. In the province of Sucumbíos, UNHCR informed the Special Rapporteur that, of the 994 Colombians who had been granted refugee status in the province, 54 had opted for voluntary repatriation with the help of UNHCR, 350 continued to live in the area (only 11 of them in the hostel intended for refugees), while the remainder were thought to have moved to other parts of Ecuador, or had for the most part returned to Putumayo.

52. Interviews conducted in Lago Agrio indicated that most Colombians are migrants engaging in informal trading. It was also reported that Colombians are members of criminal gangs in the area or are smugglers. Colombians are intensely stigmatized as violent and non-law-abiding. The population of Lago Agrio attribute the rise in crime to the growing immigration from Colombia.

53. In Santo Domingo de los Colorados, it was reported that there are between 22,000 and 25,000 Colombians, of whom only 8,500 enjoy official status (by virtue of registration as migrants), while the migration status of 1,500 more is under consideration. The Municipality of Santo Domingo indicated that during 2001 between 3,500 and 4,000 Colombians displaced by the consequences of Plan Colombia had arrived, and that an official request had been made to be included in the National Contingency Plan.

54. The Special Rapporteur was concerned to learn of the exploitation of Colombians who settle in agricultural estates and are used as cheap labour or work in exchange for food and shelter. Also of concern are reports of smuggling of persons in the area of Santo Domingo and the departure of hundreds of inhabitants from the area via illegal migration routes, using the networks operating at the coast. Lastly, emphasis should be placed on a problem of which the Special Rapporteur was informed by several sources, and which also occurs in Santo Domingo, in connection with the use of the "late registration" procedure by foreigners in order to acquire Ecuadorian citizenship illegally.

55. In the context of the Migration Act, mention should be made of the grounds for the exclusion of foreigners laid down in article 9,[12] which are of concern to the Special Rapporteur because of their discriminatory nature and their incompatibility with international human rights standards. The grounds include: diseases deemed to be serious, chronic and infectious; sexual deviance or progressive general paralysis, including habitual alcoholism, epilepsy, cretinism, blindness, and generally all handicaps which prevent the sufferers from working; illiteracy in persons aged over 15 and gigantism.

56. The expulsion procedure, known as deportation proceedings and described in chapter V of the Act, is initiated ex officio by the General Intendant of Police. It is noteworthy that the decision of the Intendant to issue the deportation order is not subject to administrative or judicial appeal, in violation of the provisions of article 13 of the International Covenant on Civil and Political Rights, to which Ecuador is a party.

57. In the prison establishments she visited, the Special Rapporteur noted that some of the foreign prisoners had had contacts with their consular representatives while being held. However, the situation of many prisoners from countries with no consular representation offers cause for concern. Testimony was received from persons who had had no consular assistance, and could not speak Spanish or English, but had nevertheless been tried without even being able to communicate with their defence counsel, for lack of interpreters. Most of those persons came from African, East European and Asian countries.

58. The Special Rapporteur also encountered situations in which foreigners found guilty of ordinary offences had completed their sentences but were still in prison because they did not have travel documents or money to pay for their repatriation. Such persons appeared to be in prison indefinitely until the situation could be resolved. In the case of foreigners from countries with no consular representation, the situation was made worse by the fact that there was no way to obtain travel documents in Ecuador. Prisoners reported that they had been offered false travel documents by some prison officials acting on behalf of the networks of smugglers in the prisons. The Special Rapporteur is also very concerned at reports that some foreigners have had their passports taken away by police officers when they were detained or questioned.

59. The Special Rapporteur received testimony from an Indonesian citizen who claimed to have been a minor at the time she was arrested. She said she had presented documents in her language which confirmed that she was a minor, but which had been rejected in court because they had not been translated into Spanish. If what she says is true, she was sentenced as an adult to eight years' imprisonment.

60. The Special Rapporteur also spoke to migrants who had been detained because they had no papers, because of their illegal status, or because they carried false documentation.[13] On 7 November, she interviewed two citizens of Sri Lanka whose request for asylum and refugee status had been accepted by the Determination Committee on 24 September. These persons were still in detention and were the subject of criminal proceedings for attempting to travel with false documents, in violation of the provisions of the 1951 Convention on the Status of Refugees, which lays down that refugees using false documentation shall not be punished.

61. The Special Rapporteur noted the overcrowding prevailing in most of the prisons she visited. She also noted the de facto discrimination suffered by foreigners because they had no families who could visit them or give them money for food.

V. FORUMS FOR DEVELOPING ECUADOR'S POLICIES RELATING TO MIGRATION

62. The Foreign Ministry informed the Special Rapporteur that Ecuador is making efforts to draw up a State policy on migration which takes account of the human rights of migrants. The process was based on two initiatives involving cooperation between the State and major partners in society. The first initiative was the Operational Plan relating to the Human Rights of Migrants, Foreigners and Refugees, agreed by the Government and civil-society organizations represented in the Sub-Commission on the Rights of Migrants, Foreigners and Refugees set up under the National Plan on Human Rights.

63. The Operational Plan relating to the Human Rights of Migrants, Foreigners and Refugees was adopted by consensus between the State and civil-society organizations in November 2000. It sets out three key objectives: to secure a legal framework which will guarantee effective respect for human rights; to strengthen existing national machinery for protection and assistance; and to carry out training, publicity and awareness creation among the population concerning the rights of migrants, foreigners and refugees.

64. The representatives of civil society informed the Special Rapporteur that they value highly the process of cooperation under way with Government bodies. However, there are grounds for concern relating to the monitoring and application of the arrangements that have been reached, owing in part to the lack of resources mentioned by the Foreign Ministry which has prevented the holding of three regional seminars to publicize the agreements. At the same time, it is important to underline the interest manifested in the areas where migration originates in the application of the provisions of the Plan.

65. The Special Rapporteur received information on the second forum, which arose from the negotiations on the initial agreements reached in the dialogue on migration between the Government and indigenous, peasant and social organizations. These agreements, signed on 29 May 2001, relate to legislative reform designed to guarantee the right to Ecuadorian nationality for the children of Ecuadorian migrants born outside the country and the right to vote abroad, and also the urgent approval by the Congress of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime, the Inter-American Convention on International Traffic in Minors and the Inter-American Convention on the International Return of Children.

66. In connection with the application of the initial agreements, the Special Rapporteur received a copy of a letter sent to the President of the Congress by the participants in the dialogue concerning the monitoring of the agreements. The Chair of the Congress's Commission on International Affairs and National Defence informed the Special Rapporteur that the two protocols to the United Nations Convention against Transnational Organized Crime needed to be declared constitutional by the Constitutional Court, and would subsequently be examined by the Commission. She was also informed of concern on the part of many civil-society bodies relating to expectations as to the establishment of the fund set up under the programme for the development of Ecuadorian migrants and their families, and the delays recorded in bringing it into operation.

67. The Special Rapporteur was given a copy of the National Plan for Ecuadorians Abroad proposed by the Foreign Ministry, in pursuance of the initial agreements. The Foreign Ministry notes that, despite the existence of a law on the status of aliens and migration, the Ecuadorian legal system contains no provisions expressly governing migrants' rights, guarantees and obligations, whether they are Ecuadorians abroad or foreign migrants in Ecuador.

A. The role of the Ombudsman[14]

68. The Ombudsman told the Special Rapporteur that, as his office's priorities include protection of the human rights of migrants, the office of the National Director for the Defence of the Human Rights of Migrants had been set up in September 2001, headed by Camilo Restrepo. He also said that he had requested the Congress to increase the office's budget in order to address the phenomenon properly. His office had worked for the creation of budgeted posts of ombudsmen in New York and New Jersey, as well as in Spain and Canada. The problem they

faced was that the ombudsmen are not accredited in the countries where they operate, so that they cannot act as official representatives, or have access to migrants in detention. The ombudsman in New York reported that he had received many reports of deception or swindling by agents offering to provide official papers in the United States. A voluntary network of legal advisers had been set up with eight lawyers established in the United States. Another major problem is that of domestic violence, which is being handled by referring cases to existing social organizations that deal with this problem.

69. From the Ombudsman's viewpoint people-smuggling is a criminal issue, which is mainly for the police to handle. There is serious concern at the prevailing corruption which enables these networks to operate. In southern Ecuador the Special Rapporteur noted the need to support the efforts of the Ombudsman to help the families of Ecuadorian migrants. The work of the Ombudsman in the areas affected by emigration and smuggling should help to strengthen the link between the most neglected and vulnerable population groups and the State, and should be directed towards preventing people-smuggling.

B. The role of civil society

70. The Special Rapporteur noted that civil society in Ecuador is highly organized, including associations of migrants and their families, which have considerable skills in making proposals[15] and possess detailed knowledge of the situation regarding migration in the country and its effects. The Special Rapporteur also noted that steps taken by indigenous, social and peasant organizations in their negotiations with the authorities have led to important commitments on the part of the Government. She highly values the dialogue initiated by civil society and the work carried out together with the State on the drafting of the Operational Plan relating to the Human Rights of Migrants, Foreigners and Refugees, which has yet to be put into effect.

71. In the areas where Ecuadorian migration originates, the Special Rapporteur noted the positive impact of the efforts made by civil-society organizations who watch over the families of migrants who remain behind in Ecuador. She considers that the practical work done by such organizations as the Pastoral Social Office of Human Mobility in monitoring the situation of the families, providing guidance and psychosocial care and watching over them is vital.

C. The international community: the International Organization for Migration (IOM) and the Office of the United Nations High Commissioner for Refugees (UNHCR)

72. Representatives of IOM described to the Special Rapporteur their role in providing advice to the State in matters relating to the National Plan for Ecuadorians Abroad and the follow-up to it, so as to facilitate the preparation of programmes for its implementation. They explained that the policies of the State must include a goal of managed migration and at the same time a goal of settlement. The Special Rapporteur considers it important that IOM should continue to work together with the State and civil society for the application of the national plan and the Operational Plan with a view to providing enhanced protection for migrants, and that priority should be given to activities designed to combat and prevent smuggling from the areas in which migration originates and in the places where the networks operate.

73. The UNHCR representatives told the Special Rapporteur that UNHCR had dedicated its efforts to the protection of foreign citizens, principally Colombians, who were seeking refuge in Ecuador. They said that where the State had refused to grant refugee status, UNHCR had sought to provide the persons concerned with guidance on the available options for regularizing their stay in Ecuador. The refugees receive humanitarian assistance from UNHCR for three months, during which they seek their own sources of income. The Special Rapporteur attaches great importance to the presence of UNHCR and IOM in the northern border region as international agencies dealing with the protection of human rights.

VI. CONCLUSIONS AND RECOMMENDATIONS

74. During her visit to Ecuador the Special Rapporteur noted that the lack of opportunities for a large proportion of the population to lead and provide their families with a decent life as the result of their labours generates a large-scale flow of Ecuadorians abroad. She notes that extreme poverty, poor knowledge of legal ways of emigrating and the risks involved in illegal migration, and individuals' lack of proper papers, mean that they are especially vulnerable to networks of smugglers and traffickers.

75. The Special Rapporteur considers that combating illegal migration should be a priority in any Ecuadorian policy, since the context of smuggling produces the worst forms of human rights violations against migrants and the subjection of their families to criminal gangs. The Special Rapporteur is of the view that a coordinated State policy must be developed to check corruption and the impunity enjoyed by the networks. The principal focus of this policy should be coordinated action by the system of administration of justice and the police, and it should enjoy political and institutional backing at the highest level. The Special Rapporteur also considers that practical steps should be taken in the areas where the networks of smugglers operate, including the coastal areas and other parts of the country from where there is an outflow of Ecuadorians. Combating the phenomenon in all its dimensions and categorizing it as a criminal offence are also matters of priority.

76. In parallel to that effort, the Special Rapporteur recommends that campaigns should be organized to inform the population of legal means of migration and the risks involved in leaving the country illegally. It is important that this effort should be accompanied by appropriate documentation and be effectively monitored by the State bodies responsible for issuing identity documents. The Special Rapporteur views as positive and necessary the initiatives for the issue of a new, secure passport and to register Ecuadorian migrants abroad properly in consulates.

77. The Special Rapporteur also considers that it is of fundamental importance to provide assistance to members of migrants' families in the areas where illegal migration originates. She observed during her visit that many State institutions and provincial authorities have still not become fully aware of the problems experienced by this segment of the population, and that the State provides scant care to the families. She believes that it is important to enhance the State's capabilities and reinforce the work being accomplished by the Ombudsman in this area. She considers that the office of the Ombudsman is particularly well placed in the State apparatus to pursue initiatives to watch over migrants' families and prevent smuggling, because of its geographical coverage, its contacts with the population and the role it has to play in protecting human rights.

78. The words used by the mayor of Azogues in describing the "collective anguish" of the people of southern Ecuador clearly reflect the emotional and psychological state of the migrants' families and the impact of emigration on this part of the country. The Special Rapporteur recommends the implementation of psychosocial programmes to help the families of migrants who have remained behind, in a joint effort by State institutions, civil society and the international community.

79. The Special Rapporteur also recommends an active policy of providing advice on how to invest migrants' remittances productively, and urges that the fund set up under the programme for the development of Ecuadorian migrants and their families should be brought into operation, together with other initiatives designed to facilitate access to credit. She also considers that programmes to guide migrants' families in the productive investment of remittances should be carried out, in cooperation with associations of migrants and their families.

80. The Special Rapporteur deems it important to examine appropriate legislative reforms, as referred to in the Operational Plan relating to the Human Rights of Migrants, Foreigners and Refugees, to bring national standards into line with the commitments entered into by Ecuador in the field of human rights. In particular, she considers that the Migration Act should be revised to ensure that it does not contain discriminatory criteria which exclude foreigners. She also believes that consideration should be given to introducing legislative reforms so that deportation orders are subject to administrative or judicial review and that victims of smuggling on Ecuadorian territory are not penalized. Lastly, she is of the view that Ecuador should seek solutions to the situation of foreign migrants who remain in detention after serving their sentences, although their release has been ordered, because lack of money is delaying their deportation.

81. The Special Rapporteur notes with concern the situation of illegal migrants in Ecuador and indigenous migrants in the cities, who suffer stigmatization, discrimination and xenophobia, and recommends that Ecuador should put into effect the provisions agreed at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in order to address this problem in the country. In that regard, she deems it important that the State should guarantee migrants who have no papers access to basic educational and health services without discrimination. She also welcomes the agreements reached under the Operational Plan relating to the Human Rights of Migrants, Foreigners and Refugees for efforts to carry out training, publicity and awareness creation among the population concerning the rights of migrants, foreigners and refugees, and recommends their implementation.

82. The Special Rapporteur received with satisfaction the information supplied by the State and civil-society organizations and indigenous, social and peasant organizations concerning the agreements that have been reached, and urges the parties to the agreements and those observing these processes to continue to join hands in putting them into effect. In particular, the Special Rapporteur recommends the effective articulation of State migration policy through all its agencies and with the support of civil-society organizations, organizations of migrants and their families and the international community.

83. The Special Rapporteur encourages Ecuador to continue to conclude bilateral agreements to regulate migration abroad by its nationals and to coordinate with the Ministry of Labour all matters relating to migrant workers. She also learned with great concern of the testimony of migrants and their families reporting abuses committed in States through which Ecuadorian migrants pass and where networks of smugglers operate, for example in Central America and Mexico. In that regard, she recommends that Ecuador should include in its external negotiating strategy dialogue with such States in order to apply measures of protection for its citizens, the effective investigation of abuses, the non-penalization of victims of smuggling and a strategy for preventing and combating smuggling which has been coordinated among those same States. She takes this opportunity to endorse the wish expressed by migrants' families concerning the conclusion of agreements among States whereby Ecuadorian citizens can serve sentences to which they have been sentenced within Ecuador.

84. The Special Rapporteur considers it important that civil society and indigenous, social and peasant organizations should pursue the dialogue initiated with the State to protect and promote the human rights of migrants. In that regard, she considers it important that the organizations should share their knowledge and experience and provide the State with advice. She believes that the organizations would benefit from developing regional and international networks to exchange and coordinate actions. She encourages organizations of migrants and their families to continue to step up their advocacy for protection of their rights.

Notes

[1] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the two optional protocols to the International Covenant on Civil and Political Rights. Ecuador has only signed and not ratified the optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

[2] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and Protocol against the Smuggling of Migrants by Land, Air and Sea.

[3] Supreme decree No. 1899. RO/382 of 30 December 1971.

[4] Supreme decree No. 1900. RO/382 of 30 December 1971.

[5] Supreme decree No. 1897. RO/382 of 30 December 1971.

[6] INEC projection of 1990 census figures to the year 2000.

[7] Working paper prepared by the Foreign Ministry and presented to the Special Rapporteur during her visit.

[8] Drawn up in 2001 by the Centre for Economic and Social Rights (CEDS), the Regional Foundation for Advisory Services in Human Rights (INREDH) and the Servicio Paz y Justicia - Ecuador (SERPAJ-E).

[9] Statistics prepared by the office of the National Director for Migration for the months January-September.

[10] The Special Rapporteur noted that article 8 of the regulations issued under the Migration Act provides that Ecuadorians aged under 18 must hold a genuine and valid individual passport or a copy of the birth certificate bearing an authorization to travel signed by their legal representative, with certification of the signature by a competent authority, or must be accompanied by their legal representative.

[11] The revised version provides that "Anyone who, by illegal means, facilitates migration by Ecuadorian or foreign nationals to other countries shall, unless this constitutes a more serious offence, be liable to ordinary imprisonment for a term between three and six years".

[12] Article 9, paragraph 13 was suspended by the then Court of Constitutional Guarantees by resolution 12, published in the RO 119 of 1 February 1993. However, the Supreme Court annulled this decision by a resolution published in the RO 392 on 4 March 1994.

[13] Article 37 of the Migration Act stipulates a prison term of six months to three years for "persons who complete, sign, issue or obtain a visa, passport or any migration document in an arbitrary manner, on the basis of false information or by improperly claiming Ecuadorian nationality".

[14] In Ecuador the Congress elects the Ombudsman by a two-thirds majority from among the names proposed, after hearing the views of human rights organizations (Constitution, art. 96). A two-thirds majority of the Congress members is also required to dismiss the Ombudsman.

[15] The proposals made by civil-society organizations and presented to the Special Rapporteur range from the establishment of a network of trade unions for migrants in Spain, together with Spanish trade unions, to possible bilateral agreements with countries of transit.